



Inspiring Excellence

Mapping of Knowledge on Projects on Justice Sector Facility Development and Human Rights in Bangladesh since 2000

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LIST OF ABBREVIATIONS

- ACC - Anti-Corruption Commission of Bangladesh
- ACDI - Agricultural Cooperative Development International
- ADR - Alternative Dispute Resolution
- AECID - Spanish Agency for International Development Cooperation
- ALRD - Association for Land Reforms and Development
- ASK - Ain o Salish Kendro
- BARC - Bangladesh Agricultural Research Council
- BDR - Bangladesh Rifles
- BELA - Bangladesh Environmental Lawyers Association
- BGB - Bangladesh Border Guard
- BHBCOP - Bangladesh Hindu-Buddha-Christian Oikya Parishad
- BILS - Bangladesh Institute of Labour Studies
- BJSC - Bangladesh Judicial Service Commission
- BLAST - Bangladesh Legal Aid and Services Trust
- BMZ - German Federal Ministry for Economic Cooperation and Development
- BNWLA - Bangladesh National Women Lawyers' Association
- BRIF - Bangladesh Rural Improvement Foundation
- BWDB - Bangladesh Water Development Board
- BWHC - Bangladesh Women's Health Coalition
- CBA - Collective Bargaining Agents
- CEDAW - Convention on the Elimination of All Forms of Discrimination against Women
- CGST - Centre for Gender and Social Transformation
- CHT - Chittagong Hill Tracts
- CHTRC - Chittagong Hill Tracts Regional Council
- CIDA - Canadian International Development Agency

CISD - Center for Integrated Social Development

CLS - Community Legal Services

COP - Community Oriented Policing

CPF - Community Police Forums

CrPC - Code of Criminal Procedure

CTHDC - Chittagong Hill District Council

DANIDA - Danish International Development Agency

DFID - Department for International Development of the United Kingdom

DJ - District Judge

DLAC - District Legal Aid Committee

DLR - Dhaka Law Report

EED - Evangelischer Entwicklungsdienst e.V.

ESCAP - United Nations Economic and Social Commission for Asia and the Pacific

ESDO - Eco-Social Development Organization

EU- European Union

FAO - Food and Agriculture Organization

FIDH - International Federation for Human Rights

GIZ - Gesellschaft für Internationale Zusammenarbeit

GOB - Government of Bangladesh

GTZ - Deutsche Gesellschaft für Technische Zusammenarbeit GmbH

HCD - High Court Division of the Supreme Court of Bangladesh

HCLRM - Hazardous Child Labour Reduction Movement

HEKS - Hilfswerk der Evangelischen Kirchen Schweiz, Switzerland

HELP-UP - Health Education and Livelihood Support Programme for the Ultra Poor

HRW - Human Rights Watch

ICCO - Dutch Interchurch Organization for Development Cooperation

ICCPR - International Covenant on Civil and Political Rights

ICDDR,B - International Centre for Diarrhoeal Disease Research, Bangladesh

ICESCR - International Covenant on Economic, Social and Cultural Rights

IDE - International Development Enterprises

ILO - International Labour Organization

IOM - International Organization for Migration

IPO - Indigenous People's Organization

IT - Information Technology

JATI - Judicial Administration Training Institute

JFA - Justice for All

JSF - Justice Sector Facility

JSSD - Justice Sector Strategic Dialogue

LCB – Law Commission of Bangladesh

MJF - Manusher Jonno Foundation

MLAA - Madaripur Legal Aid Association

MoA - Ministry of Agriculture of Bangladesh

MoFA - Ministry of Foreign Affairs of Bangladesh

MoHA - Ministry of Home Affairs of Bangladesh

MoLJPA - Ministry of Law, Justice and Parliamentary Affairs of Bangladesh

MPEMR - Ministry of Power, Energy, Mineral Resources of Bangladesh

MSB - Marie Stopes Bangladesh

NCCB - National Council of Catholic Churches Bangladesh

NGO – Non Governmental Organization

NHRC - National Human Rights Commission of Bangladesh

NLASO - National Legal Aid Services Organization

NNMC - Network of Non-mainstream Marginalized Communities

OPD - Organisation for People with Disabilities

PMID - Participatory Management Initiative for Development

RAB - Rapid Action Battalion

RDRS - Rangpur and Dinajpur Rural Service

SAARC - South Asian Association for Regional Cooperation

SAILS - South Asian Institute of Advanced Legal and Human Rights Studies

SAT - State Acquisition and Tenancy

SDC - Swiss Agency for Development and Cooperation

SHAREE - Self-Help Association for Rural People through Education & Entrepreneurship

Sida - Swedish International Development Agency

SUS - Sabalamby Unnayan Samity

TIB - Transparency International Bangladesh

UNCDF - United Nations Capital Development Fund

UNCITRAL - United Nations Commission on International Trade Law

UNDP - United Nations Development Programme

UNESCO - United Nations Educational, Scientific and Cultural Organization

UNICEF - United Nations Children's Fund

UPLAC - Union Parishad Legal Aid Committee

USAID - United States Agency for International Development

UZLAC - Upazilla Legal Aid Committee

VOCA - Volunteers in Overseas Cooperative Assistance

WHO - World Health Organization

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- International Convention on the Elimination of All Forms of Racial Discrimination*, 1963
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EXECUTIVE SUMMARY

The role and importance of the promotion of human rights and the development of justice sector facility in fostering a democratic culture, good governance, and economic development of a country cannot be over-emphasised. Due to the borderless nature of human rights, many international institutions and foreign governments are working for the promotion and protection of human rights worldwide. In Bangladesh too, many multilateral donor agencies, agencies of foreign governments, and the Government of Bangladesh (GOB) itself have undertaken numerous research projects on various aspects of human rights and justice sector facility development.

These projects have aimed at strengthening existing national institutions through legal and structural reforms, promoting alternative dispute resolution mechanisms, encouraging sector wide dialogues, protecting vulnerable groups within the community, and raising awareness among stakeholders on various issues and so on. However, as these projects are often undertaken by individual agencies in isolation, and as there is no knowledge sharing platform/mechanism or a repository of all projects undertaken; there is a chance of duplication in their efforts and outputs. With this backdrop, School of Law, BRAC University has undertaken this project to create an index and an overview of projects/reports on various aspects of the development of the justice sector and the enhancement of access to justice and human rights in Bangladesh. It is expected that this endeavour would assist in avoiding duplication in future reports or assessments undertaken by donors, thereby ensuring greater harmonisation and efficacy of donor efforts in the human rights and justice sector. It should also help the non-governmental organisations (NGOs), think tanks and individuals to better target their areas of research endeavours.

This report presents summarised and synthesised briefs on projects in human rights and justice sector facility development in Bangladesh since 2000. The briefs are organised under broad subject categories and presented in alphabetical order of the respective project titles. The summarised information on each project includes information on the title of the project, funding body, and duration of the project (where available), project implementing body, relevant Key-words and the key findings of the project report. Each of the project summaries is accompanied by brief comments on the important findings of the report and/or its limitations or the scope for embarking on further works in related areas. On each of the various subject categories (except where only one report could be identified and summarised), a brief area-wise commentary on the knowledge mapped has also been written. The purpose of this section is to present the overarching themes in those individual areas which may be considered by the policy makers in future legal and policy making exercises.

Because of the number and diversity in terms of their subject, design, objective, and methodology; drawing general conclusions on the reports covered in this knowledge mapping exercise runs the risk of gross generalisation. However, certain trends are evident. The breadth of some reports is a little too ambitious reducing the scope for undertaking any

thorough analysis and hence, their recommendations often suffer from the tendency of unsubstantiated or inadequately substantiated recommendations. For instance, the finding that archaic land laws and land record management system are in need of reform so that vulnerable people are protected from forcible eviction from their land, without any rigorous analysis on how the archaic laws are causing this and also without any framework for the proposed reform is of limited value. We also note that in some cases, reports on the same subject matter adopts very similar methodology and comes up with very similar observations and thus, make negligible contribution to the existing knowledge or legal or institutional reform discourse.

In view of the large number of projects and the short duration of this knowledge mapping project, only policy level project reports are summarised and synthesised in detail and commented upon. The service delivery projects or action level projects are presented through a comprehensive, but not exhaustive annotated bibliography. It is expected that the thoroughly presented bibliographic details on action level projects would be able to assist those stakeholders who may be interested in seeking further information on them. For ease of searching, complete bibliographic details of all projects covered in this report (either through summaries with comments or through the annotated bibliography) has been arranged according to donors, project implementers, and sub-sectors.

INTRODUCTION

Promotion and protection of the rule of law, human rights, and access to justice are important for not just ensuring a just and peaceful society but also for promoting inclusive economic development of a country. Legal reform based on sound policy considerations and smooth access to the formal judicial system can empower the poor and vulnerable sections of the community to effectively assert and establish their legally recognised rights. This is even more important for a country like Bangladesh where democratic culture and institutions are still in a formative stage and there is a substantial disparity in living standards of the population.

Recognising the significance of promoting the aforementioned fundamental attributes of a democratic society through institutional reform and capacity building of justice sector institutions, various projects have been undertaken by the (GOB), including a number of multilateral donor agencies and foreign government agencies such as the Department for International Development of the UK (DFID), Swedish International Development Cooperation Agency (Sida), United Nations Development Programme (UNDP), United States Agency for International Development (USAID), and World Bank etc. However, as the projects have been undertaken by various agencies and at different points of time and sometimes without any coordination between them, even though they may have been conducted with identical ends in mind, i.e. the development of the justice sector facility, and promotion and protection of human rights in Bangladesh; their means to that end are quite varied. These projects have aimed at strengthening existing national justice and human rights related institutions through reforms, promoting the recourse to alternative dispute resolution mechanisms, encouraging sector wide dialogues, protection of vulnerable groups within the community, and raising awareness among stakeholders etc.

It is quite possible that due to the lack of coordination among the project undertaking agencies, there have been some duplications in the works undertaken. It is also not improbable that some of the vulnerable groups have not received adequate attention in these projects. This study aims to identify the major projects embarked upon and accomplished in Bangladesh in these areas since 2000 and collate information on them, and create a knowledge base for the relevant stakeholders. If all the major projects in these arenas in recent years can be identified and information produced by them can be collated, a knowledge base can be created for both the project implementing agencies and all other stakeholders, thereby creating an institutional memory as well as achieving greater value for money on the funds spent.

This study provides a synthesised version of the objectives and findings of those projects in order to identify the resources spent in various areas of human rights and justice sector facility development and assist the GOB and donor agencies to better target their funding for future projects in areas which remain underfunded. It should also be helpful for NGOs and individuals willing to undertake new research projects on human rights and justice

sector facility development in Bangladesh. Individuals with a curiosity in relevant areas may also find this to be a starting point for their studies. This project may also pave the way for better coordination and more systemic effort of the donor agencies and GOB in launching future projects on human rights and justice sector facility development in Bangladesh.

Since the projects covered in this mapping exercise vary in terms of their subject, design, objective, and methodology; drawing general conclusions on them is difficult. Nonetheless, we may note a few apparent trends. We note that the breadth of some of the reports is a little too broad and thereby, reduces the scope for undertaking any thorough analysis. Naturally, their recommendations often suffer from the tendency of making unsubstantiated or inadequately substantiated recommendations or recommendations which are quite divorced from pragmatism and thus, make little practical impact. For instance, the finding that archaic land laws and land record management system must undergo reform so that people cannot easily be forcibly evicted from their lands, without any rigorous analysis on how the archaic laws are causing this eviction nor any framework for the proposed legal reform is of limited value.

Some of the reports are also perfunctory in their analysis and appear more akin to an advocacy piece or position paper, than an objective report or study. We also feel that unless where the secrecy or personal safety of concerned people makes it compelling to keep reports secret, the project reports should be made publicly available. This can be important for two reasons: firstly, because of their easy availability, publicly accessible reports may stand in somewhat better chance of being noted by others working on the subject and thus, not only play a role in moving the knowledge forward on the area, but may also exert more pressure on the GOB to undertake necessary legal or institutional reform. Secondly, barring some exceptions, it does not appear that maintaining an institutional library and record keeping of policy level projects within local NGOs themselves is a strength because sometimes only after locating bibliographic details of a project report undertaken by them from a secondary literature, we could collect it by visiting the implementing NGO in person although on a prior visit and discussion with the relevant staff of the NGO, we failed to get hold of the same.

WHAT IS KNOWLEDGE-MAPPING?

Knowledge may be defined as information or data which are contextualised through expert opinion, experience, and analysis, which can be used or applied to aid decision-making. Knowledge in this respect may be tacit (implying knowledge of experts who have a particular type of knowledge) or explicit (knowledge contained in documents, datasets, reports etc.), held by an individual or collectively within an organisation.

Knowledge Mapping is a tool used in organisational development and management sciences to track information and knowledge for optimal use of resources and making visible the sources of such information across an organisation. It may be defined as a system of

keeping track of information and knowledge needed for decision-making purposes.¹ Such an exercise will enable an organisation or individual to determine from where to acquire a particular type of knowledge, the holder of that knowledge and experts who specialise in such knowledge—hence, enabling large and complex sets of knowledge resources to be acquired and navigated through with ease and efficiency, and also maximising the use of the resources as a result.

It is to be noted, however, that knowledge mapping is distinct from a knowledge database or repository, but rather it provides a comprehensive guide to tracking existing knowledge in a particular field. Basically, it is a toolkit which enables keeping information about the location of knowledge sources current at any given point in time. A repository may be created as a result of the knowledge mapping exercise. However, the knowledge accumulated needs to be collated and regularly updated.

THE NEED FOR KNOWLEDGE-MAPPING ACROSS THE JUSTICE SECTOR

i. Help in identifying problems in policy making process:

Justice sector interventions have claimed mixed success across the world.² Generally the expectations from and objectives of these types of programmes are set unduly high, without considering the context of low-income countries where often the bureaucratic structures of the state are highly politicized; or the laws and justice sector institutions carry a long and entrenched colonial legacy which cannot be overcome by technical solutions or formulas which worked in other countries.

The sustainable institutional change will require leadership, commitment, political will and opportunities which may be capitalized to meaningfully mobilize stakeholder constituency. Without leadership and political will, despite legal autonomy, neither police nor judiciary may make any meaningful progress towards actual independence. A review of existing knowledge on the sector should be able to guide decisions on whether and to what

¹ J. Liebowitz (Ed.), *Knowledge Management Handbook*, (CRC Press, Boca Raton, FL., 1999); D. Grey, *Knowledge Mapping: A Practical Overview* (March 1999), <<http://smithweaversmith.com/knowledg2.htm>> accessed 24 January 2015.

² The relative success stories have mostly been claimed in middle income countries with the help of carefully devised local solutions which were targeted, strategic and based on sound analytical and empirical work. See Linn Hammergren, “International Assistance to Latin American Justice Programs” in Erik Jensen and Thomas C. Heller (eds) *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, (Stanford: Stanford University Press, 2003), “Sequencing in the design and implementation of judicial reforms: Lessons from Latin America”, (conference paper, Hague Institute for the Internationalisation of Law, 2007); Pedro C. Magalhaes, “The politics of judicial reform in Eastern Europe”, *Comparative Politics*, Vol 32, No 1 (Oct 1999), pp 43-62; Rachel Kleinfeld Belton, *Competing Definitions of the Rule of Law: Implications for Practitioners* (Washington, D.C: Carnegie Endowment for International Peace, 2005) Carnegie Papers, Rule of Law Series, No. 55; Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory*. (Cambridge: Cambridge University Press, 2004).

extent it makes sense to keep working on the supply side. It also helps consider whether it may yield better results to work more on the demand side and how such demand may be generated. These decisions should also be supported by empirical evidence which should build on existing data and devise strategies on systematizing available statistics.

Accordingly, much of the current policy-making needs to be revisited. This needs to be done not only through policy debates requiring understanding both of the big picture and data and/or variables that are changing frequently. The policy arena within the justice sector also consists of many stakeholders, individuals, organizations, often with conflicting or overlapping goals, values, and pressures. Therefore, decision-making and success of reform will have to overcome the hurdles of:

- Structural constraints of institutions like the courts, ministries etc.
- Frameworks of policy in place
- Differing logics and world views
- Distinct institutional or social cultures
- Constant political power struggles
- Complex communication within institutions as well as between institutions, public, media etc.
- An ongoing process of learning and continuous change.

ii. Create pathways to effective policies and solutions

Knowledge maps can contribute significantly to better knowledge management in complex policy discussion and decisions. They can help:

- Show the logical structure of the emerging arguments, viewpoints, empirical data, scenarios, trends, policy options (making communication more effective) and help keep the big picture from being obscured by implementation details.
- Enable a richer discourse to take place without reinventing the wheel.
- Allow rapid analysis of the subject matter by stakeholders, donor partners and policy-makers
- Increase an appreciation for the complexity of the issues affecting the justice sector rather than take a formulaic approach of packaged solutions.
- Increase scope for meaningful dialogue among stakeholders, donor partners, and other participants

Accordingly, using principles and tools of knowledge management, a knowledge mapping exercise within the justice sector will enable UNDP to make the sector more visible and enable:

- The discovery of the sources, location, ownership, value and use of existing knowledge
- Learning the roles and existing expertise of key informants and/or experts

- Identifying barriers and constraints to the flow of knowledge that may adversely affect programme or project goals and objectives
- Highlighting opportunities to leverage existing knowledge and expertise, which may be used to develop future programmes and maximise resources.
- Identifying Opportunities and constraints to knowledge creation and flows
- Encouraging re-use and prevent re-invention, saving search time and acquisition cost
- Identifying existing expertise and formulate pathways to increase knowledge sharing and exchange
- The discovery of effective and emergent communities of practice
- Support to project staff by making available critical solutions & relevant information whether explicit (documentary) or tacit (expert knowledge), thereby improving decision-making and problem-solving.

METHODOLOGY AND STRUCTURE OF THE REPORT

The members of the project team have contacted multilateral donor agencies, foreign government agencies operating in Bangladesh, the Law Commission of Bangladesh, the National Human Rights Commission of Bangladesh, many NGOs working in the human rights and justice sector via e-mail and visited their offices for collecting information, full text reports on the projects and exchange of views. The relevant project information available on the World Wide Web and other publicly available sources have also been consulted, summarised, and commented upon. The staff members of the Justice Sector Facility Development Project of the UNDP have also assisted us in collecting the relevant project materials. This report presents summarised and synthesised briefs on the major projects undertaken in human rights and justice sector facility development in Bangladesh since 2000. The briefs on the project reports are organised under broad subject categories and presented in an alphabetical order of the respective project titles. A preliminary version of the report was presented through a knowledge sharing workshop held on 27 January 2015 at BRAC University.

The summarised information on each policy level project includes the title of the project, the funding body, the project implementing body, duration of the project (where available), and key findings of the project report. For facilitating search and ease of reference, the information on projects are accompanied by relevant Key-words. Each of the project summaries includes brief comments on the major findings of the report and/or its limitations or the scope for commissioning further works in related areas. The project summaries and comments are organised under broad subject categories and as some rights and institutions are inter-connected, there are some unavoidable overlaps. For example, projects on gender

issues may deal with some pertinent issues relating to children too. On a similar note, a report on police reform may also deal with other relevant law agencies.

Service delivery projects or action level projects such as disbursement of funds to people from vulnerable sections of the community for attaining certain goals are ignored as they are generally self-explanatory and there are far too many of them to be summarised and commented upon in a time-bound exercise like this. However, relevant details of some of these projects are presented in a comprehensive but not exhaustive annotated bibliography which should be able to guide those interested in them to seek further details for serving their purposes. The focus of the mapping exercise is on the donor funded projects, but a knowledge mapping exercise cannot overlook significant reports even if the funding is not from a donor. On this consideration, reports of the Law Commission have been included even if they may be self-funded.

On each of the various subject categories (except where only one report could be identified, summarised, and commented upon), a succinct area-wise commentary on the knowledge mapped through the commentary on individual reports has been written. The project implementing team expects that this section of the report would present some overarching themes in those areas which would be useful for policy makers in their future law and policy making exercises. For ease of searching and serving the varying needs of different stakeholders, a complete bibliographic details of all projects covered in this report (either through summaries with comments or through the annotated bibliography) has been presented according to donors, project implementers, and sub-sectors.

OBJECTIVES AND EXPECTED OUTCOME

The core expected outcome of this project is a better and a thorough understanding of the projects conducted on justice sector facility development in Bangladesh in recent years. This project may enable the creation of a knowledge base that can be accessible to all stakeholders who work on the enhancement of protection of human rights and the development of justice sector facility in Bangladesh. This should also facilitate better targeted spending on future projects on human rights and justice sector facility development in Bangladesh. It is expected that this knowledge mapping exercise would better inform the policy makers on works done and identify areas where further works may be undertaken on enhancing human rights and justice sector facility development in Bangladesh.

LIMITATIONS OF THE STUDY

Owing to the short duration of the project, there is a risk that we may not have been able to locate all the relevant project materials. While most of the individuals and institutions have been very generous and supportive, we have not been able to receive any response from some of them. Thus, there is a possibility that we have not been able to collect project materials on many policy level studies undertaken by many institutions or individuals. The

research team feels that information on duration and funded amount of the projects would have helped readers to get a better picture of the projects and reports, but such pieces of information are generally unavailable and hence, could not be included in many cases.

CONCLUSION

Despite all the limitations of this knowledge mapping exercise and the project reports covered by it, it may be expected that this would be a useful tool for all actors and stakeholders in the justice and human rights sector in Bangladesh. This knowledge-mapping project has been designed in order to provide a map that facilitates the management and navigation through major reform agendas and public policy issues in the justice sector. If successfully carried out over a considerable period that captures existing interventions in the sector, it should have major implications for policy-makers and decision-makers. Policy-makers as well as donor partners, through ease of reference, may consider which roads to take within the wider policy context. It is expected that the individual project summaries and comments accompanying them, and sub-sector wise commentaries have presented a broad, macro-level view of some overarching themes in the justice sector and human rights in Bangladesh. This should serve as a point of reference for further, more targeted, and micro-level analysis of the various issues and pave way for more detailed intervention in the various specific sub-sectors.

SUMMARY AND COMMENTARY ON POLICY BASED STUDIES

CHILDREN ISSUES

Title of the Study: A Review of Laws and Policies to Prevent and Remedy Violence against Children in Police and Pre-Trial Detention in Bangladesh

Source of Funds: UK Aid of the Government of the United Kingdom

Implementing Body: Penal Reform International and Bangladesh Legal Aid and Services Trust

Duration of the Project: Not available

Key-words: Children, violence against children, pre-trial detention, and police

Summary of the Report:

This report analyses existing legal provisions and policies followed by government agencies for protection of the children in conflict or in contact with the law in dealing with police (arrest and interrogations) and pre-trial detention. It only relies on the primary legal materials and secondary sources such as reports by international agencies, state and shadow reports to treaty bodies, national and international NGOs, and media reports etc.; it does not engage in any original data collection. The report depicts a very deplorable picture of the situation of children in safe custody and comments that such custody can be anything but safe mainly due to overcrowding and lack of adequate facilities for even a basic standard of living.

Referring to a study commissioned by the police, the report mentions that harsh treatment of children in conflict with the law, disregarding the provisions of the police regulations is widespread. It underscores the need to have more efficient, transparent, and disaggregated data on children in conflict with the law which would provide the basis for more rigorous monitoring. The report claims that laws in Bangladesh often fail to demarcate a clear line between children in conflict with the law and children in need of protection. The very low age of criminal responsibility (9 years) and the performance assessment of police officers based on the number of arrests made for certain offences, incentivising police to inflate the age of children increases the risk of arrests of children. Simply to evade the responsibility of following additional legal procedures, police may misrepresent the age of a child. The report presents an alarming problem that children are often held in pre-trial detention for the maximum period allowed by law and that too for allegedly committing very petty offences.

The report notes that although the law requires that once a child is arrested, the parents of the child and a probation officer must be informed, but almost in half of the cases the provision is flouted. Similar gaps between law and practice is also widespread in court

proceedings relating to children which includes trial with adults or undergoing trial without the benefit of a legal counsel or an ill-prepared counsel. The report states that the rules on visits to children in detention by their parents or guardians are crafted in such a way that they are apparently thought of as a matter of privilege contingent on fulfilling some conditions; not as a matter of right. It finds that non-periodic inspection of detention facilities by government-appointed committees and judges do take place but their findings are not publicly disclosed which limits their utility.

Amidst an otherwise bleak picture, the report notes that over the years, due to the efforts of a National Taskforce for Releasing Children from Jails and a judgment by the HCD,³ the number of children kept in jail has fallen.⁴ The report recommends undertaking measures such as increasing the age of criminal responsibility, diverting children out of the formal justice system, laws restricting the scope for pre-trial detention of children, greater punishment of government officials detaining children in defiance of laws and so on. It provides that the law must fix a specific time limit for which a child may be held in pre-trial detention.

In order to prevent violence against arrested children at the police station, the report recommends that appropriate procedure must be followed for registering children who are taken there. It wants that so as to reduce the incidents of abusive treatments and malpractices, all persons connected with the administration of arrest and detention facilities of children must go through record checks and receive adequate training and wages, and be subject to strict supervision. The report underscores the need for independent and sudden inspection of the detention facilities by competent bodies and reporting on such inspection on a regular basis. It demands that the government must investigate all allegations of violence and ill-treatment of children and prosecute those responsible.

Comments:

Because of the enactment of the *Children Act, 2013*⁵ repealing the *Children Act, 1974*,⁶ the legal regime for the protection of the interest of children in Bangladesh has radically altered. The Preamble of the *Children Act, 2013* explicitly mentions that this law has been passed to implement the legal obligations of Bangladesh as a signatory to the *United Nations Charter on the Rights of the Child*. As the new Act is much more complete and

³ *State v Secretary, Ministry of Home Affairs* (2011) 19 BLT (HCD) 376.

⁴ Penal Reform International and Bangladesh Legal Aid and Services Trust, *A Review of Laws and Policies to Prevent and Remedy Violence against Children in Police and Pre-Trial Detention in Bangladesh* (2013) at 13.

⁵ Act No. 24 of 2013.

⁶ Act No. XXXIX of 1974.

contains different sets of rules on various matters,⁷ many of the findings of this report may no longer reflect the existing legal provisions in Bangladesh. Therefore, a new study has to be conducted to assess whether or not this new Act is indeed reflective of Bangladesh's obligations under international law and to what degree its provisions are making a difference to the lives of children in conflict and in contact with the law. As the needs of the various groups of children vary, whether the current law and practice is actually capable of distinguishing between children in conflict with the law and children simply in contact with the law or in need of protection should be an important component of such a research.

Bibliographic Details:

Penal Reform International and Bangladesh Legal Aid and Services Trust, *A Review of Laws and Policies to Prevent and Remedy Violence against Children in Police and Pre-Trial Detention in Bangladesh* (2013) <http://www.penalreform.org/wp-content/uploads/2013/06/BANGLADESH-A-review-of-law-and-policy-to-prevent-and-address-violence-against-children_English.pdf> accessed 4 January 2015

⁷ For instance, under the 1974 Act, only those who were below the age of 16 years were treated as children; *see* Section 2(f) of the *Children Act*, 1974 (now stands repealed). Now under the 2013 Act, the respective age is 18 years; *see* Section 4 of the *Children Act*, 2013.

Title of the Study: Children Cry Alone

Source of Funds: ESCAP

Implementing Body: Ain O Salish Kendra in collaboration with Child Development Centre and Integrated Community and Industrial Development Initiative

Duration of the Project: Not available

Key-words: Children, sexual abuse, and service to child victims of sexual abuse

Summary of the Report:

This report assesses the plight of sexually abused children in Bangladesh and seeks inter alia, to investigate the efficacy of various services available to children who are victims of sexual abuse and makes some recommendations on the possible interventions for ensuring that abused children are not traumatised in such a way that their normal development gets stunted. The report claims that while laws are meant to protect children from abuse, the legal norms can be overshadowed by dominant social norms and stereotypes. Its initial chapters contain an overview of some relevant data on children, the applicable legal provisions, policy instruments, and the institutional framework for protection of children. According to the report, while substantive laws may be inadequate (in comparison with international legal norms on protection of children), even those laws often remain unimplemented.⁸ It notes that the meeting of the apex body designed to work on the protection of children, the National Children's Council could not be held for years because the schedule of its members was too hectic.⁹ Surely, such state of affairs does not present a rosy picture of the institutional framework on the protection of children.

The report notes that lack of comprehensive data on sexual abuse and exploitation of children is a stumbling block towards conducting any thorough research on this topic.¹⁰ Where data may be available, they may not be segregated between women and children or may not draw any distinction between commercial and non-commercial exploitation of children. It is very disconcerting that a child victim of sexual abuse may be branded as a consenting partner in the act and may eventually end up being trafficked and forced to engage in prostitution and this unfortunate phenomenon is not limited to children working as domestic helps, but may equally apply to victims of incestuous rape.¹¹ On the basis of a sample survey conducted through questionnaires, the report presents the trauma and disorders suffered by child victims of sexual abuse but it concedes that in view of the very limited

⁸ Lubna Marium, *Children Cry Alone* (Ain O Salish Kendra, 2004), at 24.

⁹ Ibid, at 27.

¹⁰ Ibid, at 36.

¹¹ Ibid, at 39.

number of children surveyed; the trends may not necessarily be adequately representative.¹² The report notes that NGOs provide services to victims of sexual abuse in the form of legal aid, health care, and rehabilitation or reintegration but their efforts may often face lack of cooperation from within the family of the child.¹³

The report recognises that in preventing sexual abuse of children, particularly commercial exploitation, the role of the GOB is indispensable but claims that as the GOB has failed to play its proper role, NGOs fill the void.¹⁴ It suggests that NGOs may form alternative cultural groups which would presumably be sensitive to the issues of protection of children. It mulls that upon collaboration between the GOB and NGOs, a database for collating data and conducting research may be created. The report suggests that as this is a very sensitive issue, instead of trying to collate data through direct survey; local service providers may be trained in both rendering services to victims and maintaining records.¹⁵

The report recommends that for raising awareness among children, education on reproductive health and sex should be introduced in primary and secondary school curricula. It may be expected that this type of education would be helpful to dispel the constraints in a culture in which “by and large, disclosure of negative experiences is not part of the dominant practice in families or schools.”¹⁶ The report recommends that members of law enforcing agencies and bureaucrats be more sensitised about this issue through educational programmes. It also recommends that donors should provide necessary resources for making more training facilities available for imparting education on children psychology and counselling.

The report points out that for providing policy makers with more substantive information on the plights of sexually abused and exploited children; much more comprehensive information and data would have to be collated. The report points out that often lack of any viable alternatives exposes children into domestic work and other hazardous works which significantly increases the risk of them being sexually abused and exploited. It suggests that awareness raising programmes for child domestic workers and their employers may decrease the vulnerability of the children. It also lauds the programme entitled ‘Underprivileged Children’s Educational Program’ which provides many vulnerable children with market-oriented skills through a sort of combination of general education and vocational training in close collaboration with industries.

¹² Ibid, at 45.

¹³ Ibid, at 66.

¹⁴ Ibid, at 71.

¹⁵ Ibid, at 75.

¹⁶ Ibid, at 69.

Comments:

The report raises a critical question on the value of having in place an institutional framework for protection of children, if its members are so busy that they cannot even hold a meeting for years. However, the committee consists mostly of high level bureaucrats who are naturally busy with their regular administrative work and their engagement with this type of ad hoc committee would not naturally be their priority. But when the apex body remains dysfunctional, it may send a signal of indifference which may have adverse consequence for district or upazilla level bodies mandated to achieve outcomes in this area. Hence, it appears to be important to reassess the value of this type of seemingly dysfunctional bodies and the ways of making them functional. It may be a good idea to make sure that a substantial number of members of this type of committees have more concrete obligations and incentives to perform their designated roles. The functions and performance of this type of a committee should also be periodically reported and subjected to public scrutiny.

Bibliographic Details:

Marium, Lubna, *Children Cry Alone* (Ain O Salish Kendra, 2004)

Title of the Study: Justice for Children in Bangladesh: An Analysis of Recent Cases

Source of Funds: European Union

Implementing Body: Save the Children

Duration of the Project: Not available

Key-words: Children, and precedents on children rights

Summary of the Report:

The study is basically a compilation of the full text of 12 decisions of the High Court Division of the Bangladesh Supreme Court pertaining to children rights issues. All of the decisions except one have been rendered by Justice Imman Ali.¹⁷ In addition to the inclusion of the cases, the study contains a sketchy overview of the laws governing various issues relating to children in Bangladesh. It also summarises some of the major provisions of the *United Nations Charter on the Rights of the Child*. The full text decisions included in the study are accompanied by head notes and brief summary of the facts and decisions which would help readers to quickly locate the relevant cases.

The cases included in the book covers very important issues, namely: the plight of children working in hazardous *bidi* factories;¹⁸ constitutionality of the provision of mandatory death penalty under Section 6(2) of the *Repression of Violence against Women and Children Act*, 1995;¹⁹ corporal punishment of children;²⁰ the lack of regulation on domestic works by children;²¹ the menace of sexual harassment, eve-teasing, and stalking of children;²² the legality of continued detention of children in conflict with law;²³ the procedure for dealing with confessional statement of children;²⁴ commencement of criminal

¹⁷ In the one case in which Justice Imman did not write the full judgment, he was still a part of the Division Bench delivering the judgment.

¹⁸ *Ain O Salish Kendra (ASK) and Another v Bangladesh, represented by the Secretary, Ministry of Labour and Manpower, and Others* (2011) 63 DLR (HCD) 95.

¹⁹ *Bangladesh Legal Aid and Services Trust (BLAST), and Another v Bangladesh, Represented by the Secretary, Ministry of Home Affairs, and Others* (2011) 63 DLR (HCD) 10

²⁰ *Bangladesh Legal Aid and Services Trust (BLAST), and Another v Secretary, Ministry of Education, and Others* (2011) 31 BLD (HCD) 201.

²¹ *Bangladesh National Women Lawyers Association (BNWLA) v Cabinet Division, Secretariat, Dhaka & Others* (2011) 31 BLD (HCD) 265.

²² *Bangladesh National Women Lawyers Association (BNWLA) v The Govt. of Bangladesh and Others* (2011) 31 BLD (HCD) 324.

²³ *Fahima Nasrin v Government of Bangladesh and Others* (2009) 61 DLR (HCD) 232.

²⁴ *Jaibar Ali Fakir v The State* (2008) 28 BLD (HCD) 627.

proceedings against children below the age of criminal responsibility;²⁵ confining children in jail;²⁶ keeping children in safe custody and detention in prison;²⁷ keeping child victims of offences in safe custody despite the presence of competent guardians capable of taking care;²⁸ and the trial proceedings of children in conflict with law.²⁹

Comments:

Despite its wide scope, some important children rights related issues such as the rights of children with disabilities, predicaments of street children, children of imprisoned parents, children of sex workers, early marriage of children, orphans, children of broken marriages etc. are not covered. That, of course, is not a reflection of the quality or breadth of the study, as has been discussed in the foreword to the study; these important matters are untouched as they have not been dealt in by the judgments of the High Court Division.

Since the study is in the nature of a compilation, it would have been more interesting and inclusive; if it included any unreported judgment of either Divisions of the Supreme Court on child rights related issues.³⁰ The judgments mentioned in this study cover quite wide areas relating to children and anyone interested in legal studies on children rights related issues in Bangladesh would find the book a very useful starting point. As many of the judgments covered in the study contain some broad directives as to what degree those are being complied with by the various executive bodies of the government or even in proceedings of the lower courts, itself can be the subject matter of an original study and would significantly contribute to the protection of children rights.

Bibliographic Details:

Imaan, Najrana, *Justice for Children in Bangladesh: An Analysis of Recent Cases* (Save the Children, 2012)

²⁵ *The State v The Metropolitan Police Commissioner of Khulna and Others* (2008) 60 DLR (HCD) 660.

²⁶ *The State v The Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and Others* (2011) 19 BLT (HCD) 376.

²⁷ *The State v The Secretary, Ministry of Home Affairs, and Others* (2010) 30 BLD (HCD) 265.

²⁸ *State v Secretary, Ministry of Law, Justice, and Parliamentary Affairs and Others* (2009) 29 BLD (HCD) 656.

²⁹ *The State v Md. Roushan Mondal @Hashem* (2007) 59 DLR (HCD) 72.

³⁰ Of course, this point is made on the assumption that unreported decisions of the higher courts relating to children rights matters exist; which of course, may or may not be the case.

Title of the Study: Regulating the Unregulated Domestic Works by Children

Source of Funds: Not available

Implementing Body: National Human Rights Commission of Bangladesh

Duration of the Project: June 2014

Key-words: Child labour, domestic workers, child domestic workers, employer's liability, and law reform

Summary of the Report:

This report commissioned by the National Human Rights Commission examines the legal and policy mechanisms on the protection of the child domestic workers in Bangladesh.³¹ As regards the regulation of the working and living conditions of child domestic workers, the report observes that domestic works by children is almost unregulated in Bangladesh. By providing some recommendations, the report argues that the frightful conditions of the child domestic workers could be improved provided that the policy makers deal with them as a matter of priority.

Since 26th January 1990, the Government of Bangladesh is a signatory of the *Convention on the Rights of the Child*, 1989,³² Article 37(a) of which states that 'No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'. Additionally, Bangladesh has also signed and ratified the *International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour* in 2001.³³ But Bangladesh is yet to be a signatory of the ILO's latest Convention, the *Domestic Workers Convention*, 2011 (No. 189)³⁴ that came into force on 5th September 2013. This Convention was introduced for the protection of domestic workers including child domestic workers. According to this report, the underlying problem is that this kind of an international treaty have limited practical value for the stakeholders in Bangladesh since these instruments are not treated as binding laws by Bangladeshi courts unless and until their provisions are expressly incorporated into domestic laws.

³¹ This paper briefly goes through the current situation of child domestic workers in Bangladesh.

³² *Convention on the Rights of the Child*, 1989 opened for signature 20th November 1989, 1577 UNTS 3 (entered into force 2nd September 1990).

³³ International Labour Organization, *Bangladesh Decent Work Country Programme, Asian Decent Work Decade, 2006-2015* <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_106634.pdf> accessed 18 January 2015 at 4.

³⁴ International Labour Organization, *Information System on International Labour Standards: Countries that Have Not Ratified This Convention, C189 - Domestic Workers Convention, 2011 (No. 189)* <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:2551460:NO> accessed 18 January 2015.

The study report discusses the existing national legal and policy instruments relating to the regulation of child domestic works in Bangladesh and mentions that the policy and legal instruments regulating the working and living conditions of child domestic workers are inadequate. More importantly, these policy mechanisms rarely impose any specific obligations on public officials to curb the widespread abuse of child domestic workers in Bangladesh. As such it argues that there is little surprise in the fact that the existing policy and legal instruments are bringing about any meaningful results. The report also raises the point that the intended beneficiaries that are the domestic workers often do not have any legal footing to endeavour to seek enforcement of any rights professed to be granted by the policy instruments.

The report makes some suggestions so that the consternating conditions of the child domestic workers of Bangladesh could be improved. The Government of Bangladesh could implement the High Court Division's directives issued in *BNWLA v Cabinet Division*.³⁵ The report recommends that in the case of any grave injury occurring to a child domestic worker while living with the employer, the burden of proving that it is not attributable to an action/inaction/negligence of the employer should fall on the employer. According to the author of this report, such a burden of proof shifting occurs in many other cases where one party stands in an advantageous position compared to another. It proposes for the introduction of an insurance scheme for the child domestic workers for paying compensation to them in cases of court sanctioned orders to pay such compensation, the premium of which would have to be borne by employers. The report also suggests the formation of a sort of quasi-judicial body consisting of retired judicial officers, the service of which would be free for the domestic workers. Similarly, the report argues that the *Domestic Workers Convention*, 2011 could be ratified by the Government which is the principal international legal instrument for the protection of domestic workers.

Comments:

Being a recent study, the findings of this report brings out the current status of the child domestic workers in Bangladesh. The reason behind the appalling conditions of the child domestic workers is the ambivalent and indecisive attitude of the Government. This report addresses the weaknesses and lacking in the legal and policy instruments protecting child domestic workers. It is suffice to say here that there is no need to carry out a more stringent policy. Provided that the Government gives the recommendations³⁶ mentioned in this report a reality by incorporating them into laws, the deplorable conditions of the child domestic workers might be somewhat improved.

³⁵ It is a constitutional obligation of the GOB. See, Article 112 of the *Constitution of the People's Republic of Bangladesh*, 1972 which provides that 'All authorities, executive and judicial, in the Republic shall act in aid of the Supreme Court'.

³⁶ This report advocates the implementation of current national and international legal and policy instruments. It also proposes some new development in the protection of domestic workers.

Bibliographic Details:

Islam, Md. Rizwanul, *Regulating the Unregulated Domestic Works by Children* (2014)
<<http://www.nhrc.org.bd/PDF/Study%20reports/Children.pdf>> accessed 18 January 2015

COURTS AND ADMINISTRATION OF JUSTICE

Title of the Study: Business Process Mapping and Review Guidelines of Judicial Strengthening Project

Source of Funds: Not applicable

Implementing Body: UNDP

Duration of the Project: Not available

Key-words: Business process, courts, and capacity building

Summary of the Report:

This is a technical report on district court process which delineates the micro processes involved in district court administration and includes all relevant steps from filing of a case to its disposal. The report makes both policy as well as practical recommendations for streamlining court processes with a view to enhance efficiency, reduce delays and maximize access to justice for the litigants. The focus of this report is on the overall business process of district (civil) courts and how to manage change effectively. Thus, it is intended to be a living document which will need to be adjusted with the needs of the court and the stakeholders. The report is also intended to be part of a comprehensive and continuous review of court policies, practices, processes and procedures by those directly responsible, leading to more effective administration of justice in the lower judiciary of Bangladesh.

The Report primarily focuses on micro processes involved in court administration but it also links process problems to macro issues of overall organization and administration of courts.

i) Some key problems identified in the report include:

- Lack of Mission and Vision Statement
- Lack of Strategic Plan
- Independence and Autonomy of the Judiciary: There seems to be inconsistent application of the concept of judicial independence and autonomy and the subordinate courts are effectively reporting to two institutions (the Supreme Court and the Ministry of Law, Justice and Parliamentary Affairs) instead of one, leading to serious operational problems for the courts.
- Lack of an office of Independent Attorney Services
- Lack of effective dialogue between the bench and the bar
- Lack of Client Service for Court Users

- Unequal Distribution of Workload for Judges
- Lack of Sufficient Security and Disability Accommodation

ii) Some Key Recommendations include:

- Create a strategic plan delineating each institution as well as individual's role
- Initiate Dialogue with the bar, bench and other stakeholders on proposed reforms
- Review and streamline rules of business for judges of the district court dealing with remuneration, holidays and leaves, promotions etc.
- Initiating dialogue with judges and court staff determining major areas in need of resources and prioritizing accordingly.
- Budget analysis with support from (i) the Ministry of Law, Justice and Parliamentary Affairs or the Ministry of Finance who may provide in-house officials who are dedicated budget analysts and (ii) External assistance from donor partners to deploy a professional financial/budget analyst who can map the needs of the judiciary in light of its overall institutional structure and make recommendations accordingly. The revised budget may then be implemented according to specific programmatic structures and performance indicators in order to measure its effectiveness in addressing resource constraints.
- Carrying out the review of preliminary matters such as suit-maintainability, review and checking of filing documents in order etc. through existing staff and increasing staff intake OR recruiting para-legal court officers with a law degree (but not necessarily recruited through judicial services examinations) OR newly recruited (but not yet confirmed) judges can also be assigned to carry out this function in the short term, with a view to phasing out to hand over this responsibility to trained court staff or paralegals. The practice of sub-contracting work to *ummedars* must be eliminated.
- Recruiting qualified, professional administrators to manage the administrative and operational aspects of district courts.
- The courts, in consultation with management experts (or if administrators are recruited), should discuss, draft and adopt Standard Operating Procedures (SOPs) **for all operational (non-judicial) activities of the Judiciary**, with a view to standardize court processes, delineate role of court staff, organize the paper record effectively etc.
- The Judiciary should establish a consolidated, centralized *Office of the Registrar* in the district courts.
- As a matter of policy, consideration may be given to revising the pecuniary jurisdiction of courts to evenly distribute some of the case load within the courts.

- A citizen charter may be drawn up and conspicuously displayed in front of the court so that the court users/ litigants may easily obtain all relevant information about the expected standard of service.
- A staffed help-desk and a complaints section maybe set up in court to be the official point of contact for all court-related information as well as a desk where court users/clients can lodge complaints.
- Introduce a random case assignment application to ensure that the judges' workloads are equitably distributed and forum shopping by lawyers is prevented.
- Improve District Court Records Management
- Introduce Bar Coding technology or Register of Actions card to prevent unauthorized movement or disappearance of files
- Develop and implement strong ethical guidelines for the judiciary, bar and court staff and maintain a 'zero tolerance' policy for reported cases of unethical behaviour
- Initiate dialogue with court staff association and encourage for formal registration of the association
- Establish a reporting mechanism whereby, judges, court staff and lawyers maybe reported for unethical behaviour. Ways of reporting must be widely disseminated to the public and court users.
- Setting up a comprehensive feedback system. Generally, Controlling Officer (District Judge and Chief Judicial Magistrate or Chief Metropolitan Magistrate) evaluates the junior judicial officers and accordingly assigns ACR feedback. However, there should be a feedback mechanism for all judicial officers and staff to communicate their working experiences and suggest how the workplace and court services may be improved.

iii) Implementation and Next Steps include:

a. Develop an Appropriate Governance and Management Structure by

- **Setting Strategic Mission and Goals for the Court**
- **Creating Technical Working Groups:** The success of court-based reform will require assigning a technical working group (s) (TWG) or taskforce to consider the reforms and providing sufficient authority to the group to implement those recommendations. The TWG should comprise representatives from the highest point of the court hierarchy, e.g., a judge, to the lowest, e.g., a deputy registrar, *sherestadar* or *peshkar*. Ideally, this group must be temporarily removed from their usual services and *deputed* to spend a stipulated period of 3 or 6 or 9 months as appropriate on identified and targeted procedural reform.

- **Maintaining Institutional Memory and providing Decision-making Power:** Changed management will require ownership at every level throughout the court hierarchy and it needs to be an inclusive effort. The Supreme Court should ensure that all the senior most judges are included or apprised of the proposed reforms. Similarly, in the district courts arrangements should be made so that reform efforts are not designed around an individual judge or judicial officer but information is retained within the institution. The Judicial Reform Committee, CMC and TWGs should also be granted decision-making authority where each groups will own and accept accountability for the proposed reforms.

- b. **Assess Organizational Readiness, Building Support for Change and Managing Expectations**
- c. **Measure the gap between the existing processes and the Court's Strategic Mission, Vision and Objectives.**

Comments:

This report is yet to be officially published and shared with the Supreme Court. It has received feedback from several district court judges which has been incorporated into the draft. However, the draft would benefit from wider dissemination and dialogue prior to publication. Each sub-process in the report would need to be further broken down so that every micro-process maybe mapped against the initial overview that this report is supposed to provide.

The report would also benefit from being expanded to other justice sector agencies in line with some of the key recommendations in the Justice Sector Harmonization Report 2007 (Sara Hossain and Adam Stapleton). The Harmonization report provided an agency-wide overview and the business process mapping report has attempted to map just one aspect (civil litigation) of one institution (district courts). Therefore, further reports would need to be drawn up to provide both GOB and the donor partners' greater visibility of the inner workings of the justice sector institutions.

Bibliographic Details:

Cassidy, Keenan, Cynthia Farid, and Saqeb Mahbub, *Business Process Mapping and Review Guidelines of Judicial Strengthening Project* (UNDP, 2014)

Title of the Study: Directions For Justice Sector Reform – Input Into Cas Formulation

Source of Funds: World Bank

Implementing Body: World Bank

Duration of the Project: Not available

Key-words: Justice Sector reform, policy dialogue, and lessons learned

Summary of the Report:

This report is a strategy note that reflects on the World Bank's engagement in the justice sector sought to introduce reforms to the civil system by improving the commercial legal framework, increasing court efficiency (strengthening court administration, improving case management, strengthening judicial training), upgrading infrastructure and facilities, establishing capacity in law reform and legal drafting, and attempting to establish and support a legal aid framework. A Government strategy supporting the reform agenda in this project was adopted in 2000. The project came to a close in December 2008, after a number of extensions. This strategy note is also meant to inform the country team's thinking about how it may proceed with future work in the sector: whether it is one in which the Bank should re-engage, obstacles to engagement, potential entry points and their timing. It also puts forward a strategy on how the ongoing empirical work being undertaken on citizens' experiences of the legal system and on key institutions can provide a platform for broadening the Bank's engagement in Bangladesh.

The report acknowledged some of the shortcomings in the project design and assumptions upon which it was designed and especially underscored:

- Its lack of engagement with the Bar. The bar was not subsequently updated about the project's progress nor was its views sought on how the project could be made to work better.
- Perceptions that the project had been "hijacked" by Government and the Bank's lack of transparency. This was particularly expressed as a concern at a time when the judiciary was being systematically captured by the ruling party and the rule of law was being significantly undermined.
- Concerns that too little effort was made to win over broader civil society support and to explain the project's objectives, and that far too much emphasis was placed on infrastructure at the cost of real reform or improvements in access to justice.
- Lack of policy dialogue
- Piecemeal programming across the donor interventions and lack of a strong empirical base.

The report further recommended that in order to move forward with lessons learnt from a failed project:

- The Bank needed to reach out to Government and stakeholders.
- Work on building an evidence-based policy dialogue.
- More vigorous demand side engagement is needed.

Reach out to legal professional institutions such as the Supreme Court Bar Association and law school faculties, in addition to the Dhaka-based think tanks and legal aid NGOs.

Comments:

This report was written while the official evaluation of the Legal and Judicial Capacity Building Project was pending and an empirical survey on perceptions of crimes was due to be published. It analyzed the failures claimed by the project and ways of engaging with the sector. Much of the thinking expressed here has subsequently been discussed and deployed by UNDP and other agencies such as USAID. However, it appears that no reference was made to the recommendations made in the report and there seems to be no mechanism, even though an LCG platform exists, for preserving institutional memory. Therefore, reinventing the wheel is occurring when it comes to programming rather than moving forward from lessons learned.

Bibliographic Details:

Akmeemana, Saku, *Directions For Justice Sector Reform – Input Into Cas Formulation* (2009)

Title of the Study: Disputes, Crimes and Pathways of Redress: A Household Survey on Citizens' Perceptions and Experiences of the Justice System in Bangladesh

Source of Funds: Not Applicable

Implementing Body: World Bank

Duration of the Project: Not available

Key-words: Citizen perception, legal wrongs, crime, legal awareness, and justice sector reform

Summary of the Report:

This report presents the preliminary findings of a survey on citizens' experience of legal wrongs in Bangladesh, and how both formal and informal justice systems are perceived and utilized to resolve them. It takes a broad definition of a legal wrong, as any act which gives rise to legal redress or a legal claim. Both formal and informal justice institutions, including the judiciary, law enforcement agencies, traditional dispute resolution mechanisms, non-governmental organizations that focus on legal issues, as well as local government bodies are all considered as part of the dispute resolution mechanisms availed by Bangladeshis. The survey focuses on the choices that Bangladeshis make in resolving legal disputes, including their basic legal knowledge; the factors that influence their preference for formal or alternative solutions to legal problems; and their level of satisfaction with chosen courses of action.

The report provides a broad outline of the picture of dispute and crime incidence and use of dispute resolution institutions but it also acknowledges that there is a wealth of further information and insights that remain to be gained from qualitative research and analysis. Consequently, the report attempts to draw out the major themes arising from the survey results, with the bulk of the tables and data being contained in the annexes as reference material. Finally, the report concludes with a discussion of the policy implications of the findings, but does not provide prescriptive recommendations in the belief that this is a matter for Bangladeshis to determine.

Comments:

This report, like many other reports on justice sector programmes, seems to be not reflected nor referred to in subsequent findings of other projects. This was a large scale research carried out with the help of very competent local researchers. However, in subsequent baseline studies and other studies, there seems to be no follow up or cross over with these researchers. Instead there seems to be new and mostly international consultants/researchers doing the work.

Bibliographic Details:

Akmeemana, Saku, *Disputes, Crimes and Pathways of Redress: A Household Survey on Citizens' Perceptions and Experiences of the Justice System in Bangladesh* (World Bank, 2010)

Title of the Study: Evidence Based Analysis of the Trial Courts of Bangladesh

Source of Funds: Not applicable

Implementing Body: UNDP/JSF

Duration of the Project: Not available

Key-words: Trial courts, backlog in subordinate judiciary

Summary of the Report:

This study investigated the extent, nature and causes of the problem of backlog in the subordinate judiciary by providing *evidence based* analysis of the last ten years case flow, with a particular focus on current situation, in the lower courts of Bangladesh. It also maps the various stages of court processes and procedures, identifying the reasons of case blockages at each stage and finally examines how the judicial budget and human resources can be better utilized to support the trial courts.

This study reveals that the problem of backlog continues to rise even after the appointment of a good number of new judges in 2007, largely because of the failure to address the main causes of delay in disposal of cases. The number of backlog in civil and criminal cases has increased by 2,41,666 and 2,55,572 respectively over the aforesaid period. The available data does not even show consistent or proportional positive impact of recruitment in 2006 of a good number of judges on disposal rate during 2007-2010. These inconsistencies suggest that unless the number of fully equipped *ejlash* (court room) is increased, the number and quality of support staffs are enhanced, the cooperation and expertise of lawyers is ensured, litigants are made aware of their rights and duties and above all procedural loopholes are thoroughly addressed; recruitment of more junior judges alone could not ensure disposal of significantly larger number of cases. This argument has also been substantiated by the fact that the judges directly control only a few of various stages of civil and criminal trial, while the support staff and lawyers could manipulate other processes more easily to delay the disposal of a case.

In the course of analyzing the backlog, this study finds that out of a total of 267 civil suits filed in 2000 in a Court of Joint District Judge of Dhaka, peremptory hearing of only 32 cases has been completed in the last ten years. Among others, a large number of cases were dismissed apparently as false, frivolous or vexatious suits and long delays is caused mostly at the stage of service of summons, filing of written statement or during peremptory hearing. In regard to criminal cases filed in particular at the police stations, an analysis of year wise disposal at trial stage of 8237 cases filed in 2000 shows that only around 60 cases could have been disposed of in first 5 years of trial. Cases those took 8-10 years for disposal are 12% while 76 cases were disposed on the 11th years in 2010 and 84 remains unresolved within 2010. The life cycle of some cases indicates that a good number of cases linger for years only due to minor procedural loopholes like the failure of official witnesses to appear, to publish the name of the wanted accused in media, or to submit the report of finger print experts.

The report highlights seven primary reasons for the backlogs: 1) delay tactics, 2) false cases, 3) witness examination, 4) over use of trials, 5) pre-trial procedures, 6) unreasonable expectations on the judiciary and 7) the disrepair of the courts. The study also developed a list of four low-cost, high-impact, easily-implemented pilot programmes that have the potential to reduce the current backlog in Bangladesh. These are concerning a) Litigant Education b) Affordable, Proximal & Neutral Mediation Centers c) Witness Check-in Desk and d) Monthly Coordination Meetings with Police & Prisons.

Comments:

This study worked with numbers and statistics. It provided evidence to commonly-held assumptions and discourse on problems affecting courtrooms. This report along with the Harmonization Report (Hossain and Stapleton 2007) needed to be incorporated to a greater degree into the Business Process Mapping Report and the Baseline Study that was carried out under the JUST Project. It also appears that although there is some overlap between current interventions of UNDP in some of the districts, the report also includes other districts where UNDP programmes have no presence. Accordingly, with some planning the justice sector projects which began after the study was commissioned could have benefitted from focusing on districts from which this data had emerged.

Bibliographic Details:

Afroz, Tureen, Heather Goldsmith, and Asif Nazrul, *Evidence Based Analysis of the Trial Courts of Bangladesh* (UNDP, 2011)

Title of the Study: Implementation Completion and Results Report

Source of Funds: World Bank, CIDA, DANIDA

Implementing Body: Not applicable

Duration of the Project: Not applicable

Key-words: Legal and judicial capacity building, and results report

Summary of the Report:

This report is an evaluation of the Legal and Judicial Capacity Building Project implemented between 2001 and 2006 with an 18 month extension up to 2008. This was a technical assistance and reform programme. The project development objectives were to improve the efficiency, effectiveness, and accountability of the civil justice delivery system, and increase access to justice, particularly for women and the poor; while providing a foundation for protecting against corruption and improving governance.

The project was designed to have five components:

- (i) **Judicial Capacity Building:** to reduce delays in concluding cases through
 - a. Effective Case Management systems
 - b. Physical infrastructure etc for e.g. reconstruction of several court houses and JATI
 - c. To modernise court administration practices at the national and district levels.
- (ii) **Improving Access to Justice and Legal Literacy and Public Awareness :** through
 - a. Gender sensitivity training amongst the judiciary
 - b. Increased women's representation on the bench
 - c. Strengthening of formal and informal ADR mechanisms and small causes courts
 - d. Establish the National Legal Aid Organization (NLAO) and District Legal Aid.
 - e. Improving Legal literacy public awareness and *shalish* services and carried out by qualified NGOs.
 - f. Bar Council and Bar Association were to train and educate their members about the reforms and their intended benefits.

- (iii) **Legal Reform Capacity Building:** Strengthening the Law Commission and the Drafting Wing of the Law Ministry
- (iv) **Preparation of Future Reforms:** This component aimed to support future reforms and studies were to be undertaken to give final shape to the proposed structure and terms of reference for:
 - a. a central administrative office for the judiciary;
 - b. a national judicial pay commission; and
 - c. a judicial service commission.
- (v) **Project Implementation and Related Services:** to coordinate and facilitate project implementation carried out by the Ministry of Law (MOL) who was to be responsible for financial reporting and auditing, the legal services fund, technical services through the Technical Advisor, and coordinating project activities. It was also expected to facilitate procurement of goods, works, and services, in close consultation and coordination with the different implementing entities under the Project, while the Public Works Department (PWD) would be responsible for procurement of civil works.

Implementation:

The implementation was slow and during the course of implementation the focus shifted from capacity building to rehabilitation of court infrastructure. Initially international contractors such as IRIS and RAC were employed in developing the government with solutions to business processes but due to internal disputes between the contractors, lack of supervision from the World Bank and lack of ownership and commitment from the government the project was ultimately deemed unsatisfactory.

To assist with the design of the project, the MOL appointed a team, which worked with the Registrar's Office at the Supreme Court (SC). The Chief Justice also put in place the SC Implementation Committee (SCIC) comprising there SC Judges and the Registrar. However, the team (national) suffered from frequent turnover of at least three Registrars and several Project Directors who were designed to be main counterparts for steering the project. There were also three different Chief Justices during the project period. In addition, the takeover of the BNP government at the inception of the project also shifted the initial strategic alignments of the counterparts.

Five Pilot Courts were set up which began their backlog reduction programmes and some of these for a limited time reduced their backlog. However, these were not sustainable due to severe lack of leadership upon the departure of the international contractors. IT systems were put in place but the Government made no provision for maintenance, training and failed to institutionalise IT. JATI was considered to be a notable development but the users of the premises were not consulted thus making the final output less than accommodating for its users and the construction of the building was left incomplete. **The**

singular notable development was said to be the strengthening of the Drafting Wing of the Ministry of Law, which was a partial contribution of the project. The Drafting Wing received books and training that enabled the preparation of its own Legislative Deskbook of Bangladesh. However, its counterpart, the Law Commission was not believed to have benefitted in the same manner.

The role of co-financiers such as CIDA and DANIDA were somewhat limited due to the Government's unresponsiveness. CIDA was responsible for the legal aid component but its contribution was somewhat limited to supply of computers and organisation of study tours. It did succeed in setting up a Duty Counsel System and contributed to some degree of better management of cases. However, this system did shift funds away from and led to the failure to achieve its core objective of setting up a National Legal Aid Office.

The project deliverables designed to reduce gender gap and sensitise the judiciary were not achieved in spite of initial attempts to foster communication and dialogue. However, the Chief Justice was personally involved in the process and his support contributed to a 30 per cent increase in judicial appointments of women with a nationwide overall increase of 45 per cent. Legal Aid, ADR and small causes courts were not established but the project did lead to the changes in the Civil Procedure Code with some positive impact on dispute resolution.

Problems:

There were several problems inherent in the project design and management. For a first intervention in the justice sector, the objectives set were ambiguous and over-ambitious without taking into account the weak institutional capacity and the less than reform-conducive environment. The overall project lacked sustainable progress.

- (i) The major components were not revised during the implementation of the project. A midterm review did take place which was ultimately not incorporated in the implementation. This review attempted to place a greater focus on accountability of institutions, transparency and data collection, and access issues.
- (ii) Relevance of insufficient autonomy of the judiciary was not taken into account and this was not addressed through design or policy dialogue. The project never dealt with how it could help in furthering the separation and judicial independence.
- (iii) Weak Monitoring and Evaluation in place, particularly delay in creating a baseline which was subsequently not updated nor followed up.
- (iv) Lack of Ownership from the national counterparts:
 - a. The Government demonstrated weak capacity and there was never a concerted coordinated effort to provide leadership for reforms and its commitment whittled away upon departure of the International Contractor.

- b. The judges were not full-time overseers of the court component and did not dedicate time and effort to guide the work of the consultants.
 - c. No requirements were placed on the Registrar to engage with the International Contractor and enable a reform-conducive environment.
 - d. There was a shortage of district court judges which made it difficult to pilot reforms.
 - e. The Ministry of Law, Justice and Parliamentary Affairs did not develop sufficient procurement capacity and the Public Works Department, in spite of completing most of the contracts failed to manage them adequately. There was also a distinct lack of budgetary support for operation and management from the government which also ultimately contributed to the fact that the reforms were not sustainable.
- (v) Lack of Supervision and failure to enter into policy dialogue from the Donor:
- a. There was a major lack of oversight and active management. All supervision was through the Dhaka Office. The co-financiers seeking a joint supervision mission never materialised and over seven years of project implementation, only five supervision missions were fielded.
 - b. The task team lacked requisite experience and failed to oversee both capacity building and civil-works components. There was no legal expert i.e. a lawyer with technical expertise and knowledge and experience of the justice sector to steer the project.
 - c. There was a major disconnect between the project ratings and the realities on the ground as internal reporting on implementation and assessment was inflated and inaccurate. The Bank Management did not verify results on the ground nor addressed any challenges.
- (vi) Lack of Communication and dialogue between the World Bank and its co-financiers.
- a. CIDA: was unable to establish a good relationship with their Government counterparts due to its conflicting role as both donor and funder. The government was unresponsive and the Bank failed to intervene and supervise to bridge those gaps.
 - b. DANIDA: DANIDA's co-financing role was to build capacity within the JATI, by providing a full-time expatriate adviser to the Director-General, furniture and IT equipment and to review and modernise its curriculum and business processes. But due to severe systemic issues of the JATI such as lack of budget, manpower and strategic leadership and support by the Government the overall objectives of DANIDA were never achieved.

- (vii) Failure to engage Stakeholders and Civil Society: There was very little effort to win over broader civil society support with too much emphasis on infrastructure. There were some initial consultations with civil society but it was subsequently never followed up.

Lessons:

- (i) Success of reform requires strong commitments and capable leadership and ownership of national counterparts. For example: Active role of the Chief Justice led to an increased participation of women in the judiciary.
- (ii) International Consultant/contractors are no substitute for local institutional capacity.
- (iii) M&E needs to be consistent, rigorous and timely.
- (iv) Restructuring must take place taking into account all aspects and changing field realities. Critical opportunities must be capitalised as and when they arise (judicial separation in this case) and project must be redesigned in the face of resistance.
- (v) To this end, there is a need for constant multi-tiered policy dialogue. For example: the implementers could have used the issue of judicial separation as a window to further and engage in policy dialogue.
- (vi) There must be a parallel demand for justice sector reform and civil society, Bar Associations and think-tanks must be utilised and engaged.

Comments:

This project was by far the largest investment in the formal justice sector. The report is self-explanatory. However, it appears that the lessons from that report may not have been taken into consideration when designing new projects as the technical solutions offered in other projects seem largely similar. In addition, none of the literature from the case management system installation exercise could be found anywhere. Preserving such information would have certainly reduced more recent projects from carrying out new assessments for mapping the various institutions in the justice sector.

Bibliographic Details:

Implementation Completion and Results Report (IDA 34850 TF0 27508), The World Bank, <http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2010/07/14/000333037_20100714004114/Rendered/INDEX/ICR120001Public0Disclosed0July0121.txt> accessed 5 January 2015

Title of the Study: JUST Baseline Survey

Source of Funds: UNDP

Implementing Body: JUST PROJECT UNDP/SURCH (A House of Survey Research)

Duration of the Project: Not available

Key-words: Business process, courts, and capacity building

Summary of the Report:

This report is prepared based on findings of a baseline survey of interventions implemented by Judicial Strengthening (JUST) Project, United Nations Development Programme (UNDP) Bangladesh. The research was commissioned to SURCH (A House of Survey Research) and was carried out in three pilot districts of Dhaka, Kishoreganj and Rangamati, using both quantitative and qualitative methods of data collection along with review of documents. Quantitative method included household survey and survey of service recipients at court point and qualitative methods included focus group discussion (FGD), key informant interview (KII), in-depth interview (IDI), case study and review of court documents. A total of 2163 households (doubling the number for some selected indicators) and 854 court point respondents were interviewed being selected systematically. On the other hand, a total of 18 FGDs, 65 KIIs, 36 IDIs, 30 case studies (of which 15 were criminal cases and 15 civil cases closed with verdict during 2010-2013) and document review of relevant reports, project documents and court documents were employed.

Despite some acute problems and limitations such as delay in disposal of cases and case backlog, the data reveals that people to some extent retain confidence on the judiciary, as it is perceived to be an efficient institution for the protection of people. However, there are objections and concerns about the limitations to access its full potential. Accordingly, the report makes several recommendations for backlog reduction.

Comments:

This report presents localised findings of the situation in pilot districts. The sample size seems somewhat small, especially for Dhaka. However, the findings are in concert with previous findings of other donor reports in the past. Although the report seems to be focusing on a situation analysis, it is unlikely to provide for detailed understanding of the reasons for backlog as the two are often unrelated. Backlog calculation in Bangladesh courts has not been empirically sound thus far and has not been adequately defined in previous reports including any available literature on the World Bank project. Therefore, it is a good effort at moving towards more empirically sound data from analysis based reports. The findings generally seem to be an accurate picture of the access to justice landscape.

Bibliographic Details:

SURCH, *JUST Baseline Survey 2013* (UNDP, 2013)

Title of the Study: Rule of Law Assessment

Source of Funds: USAID

Implementing Body: Millennium Partners Inc. USA

Duration of the Project: Not available

Key-words: Business process, courts, and capacity building

Summary of the Report:

This assessment report was commissioned in 2011 by USAID prior to launching its current Justice for All programme. The methodology was primarily qualitative and included interviews with members of the judiciary, bar, legal aid organisations as well as civil society members.

The report identifies backlogs as a significant issue and a serious impediment to timely access to justice and a burden on the economy and society. Especially poignant, the long delays in deciding pending criminal cases are cited as a principal cause why the majority of those incarcerated in Bangladesh's overcrowded prisons are awaiting trial rather than serving sentences. It identifies that the polarizing competition between the two major political parties as a fundamental challenge for development of the rule of law in Bangladesh. This polarization has a corrupting influence on the courts, as on other public institutions. The challenge of unrestrained political confrontation manifests itself in erosion of judicial independence and accountability, a lack of efficiency and integrity in the justice system, widespread impunity and violations of human rights, and inadequate access to justice and unequal protection of the law:

The Supreme Court has vigorously defended fundamental constitutional principles in landmark decisions. However, the Court has not developed needed institutional capacity to manage the Judiciary and the executive continues to exercise inordinate influence. Recent laudable efforts by the Chief Justice have addressed the efficiency of judicial case management. However, opinions differ widely on how to address issues of complex procedures, lax case management, deficient information management systems, insufficient personnel, and inadequate physical infrastructure. Efficiency issues are also evident beyond the courts in the investigation and prosecution of criminal offenses. International monitors have reported numerous instances of extrajudicial executions by the Bangladesh security forces. Prosecutions are rare in these cases and, despite the government's "zero tolerance" policy, law enforcement and military officers have virtually complete discretion. Deficiencies in the justice system were identified as a source of general public dissatisfaction. But the limitations are especially injurious to the poor.

Accordingly, the report primarily recommended:

- Reinvigoration of the government's legal aid fund as a broad effort to overcome inequality.

- Enhancing judicial self-governance and independence support for judicial self-governance should encourage self-examination by the Judiciary of its performance, priority needs, and aspirations. Such self-examination can provide the basis for a strategic approach to achieving institutional excellence and adherence to core values.

Support for improved access to justice should begin with support for the Bangladesh government's legal aid program, with engagement of interested think tanks, NGOs, and universities in a broad coalition. For the longer term, additional measures should be explored, such as institutional strengthening of civil society organisations and support for improved legal education. Both these potential areas for achieving sustainable impact in the context of good governance and democratic consolidation need to be approached cautiously, with recognition of the risk of failure.

Comments:

This report primarily formed its opinions based on interviews and available literature. However, USAID neither shared or disseminated this report with other agencies nor seems to have extensive visibility in areas in which it operates or made available for inclusion in literature that have since been produced by the project. These points towards the need for a greater discussion on donor coordination in order to streamline all the projects to maximise limited resources. The report was also lacking in one major aspect, in that, it left out an analysis of the police or the security sector which is an integral component in any rule of law analysis. However, it considers the role of the judiciary and justice institutions and makes several recommendations which have been incorporated in the programmatic themes of the Justice for All project which is currently being implemented by National Center for State Courts (NCSC-USA).

Bibliographic Details:

Stamenkovic, Natalija et. al., *Rule of Law Assessment* (USAID, 2011)

GENDER ISSUES

Title of the Study: A Final Report on the Proposed Law of Domestic Violence along with a Draft Bill Namely, the Domestic Violence Act, 200----

Source of Funds: Not applicable

Implementing Body: Law Commission of Bangladesh

Duration of the Project: Not available

Key-words: Domestic violence and law reform

Summary of the Report:

This report by the LCB assesses the case for a special statute on domestic violence (mainly focusing on violence inflicted upon women by men) and prepares a draft Bill on this subject. It purports to consider opinions received from Judges, academics, women's organisations, and NGO activists on domestic violence. It argues that all of these stakeholders have suggested that an exclusive law on prohibition of domestic violence is needed.³⁷ The report briefly narrates the various forms that domestic violence may take in Bangladesh. The report notes that domestic violence is a serious problem all over the world and has been so from time immemorial. It finds that apprehension of public censure, fear of further torture for breaching family's privacy, and perception of bringing disrepute to the family etc. often force victims to keep silent about their sufferings and thus, contribute to the aggravation of sufferings.

The authors of the report claim that in preparing their suggested draft Bill, they have considered laws on domestic violence of many other Commonwealth countries. Although the introductory part of the report almost entirely focuses on domestic violence by men on women, the definition of domestic violence inserted in the draft Bill is gender-neutral (i.e. it may apply to violence by women against men too) and encompasses physical, sexual, and psychological abuses.³⁸ The draft Bill provides that not just the victims, but anyone who has any reason to believe that an offence punishable under this law is being or has been committed, may provide information to authorities and for providing such information on good faith, an informant cannot be sued for libel or analogous cause of actions.³⁹ Generally, the acts which are covered by the definition of domestic violence would probably be

³⁷ However, the actual suggestions of the stakeholders are not included (not even in any concise form) in the report, rendering it impossible to assess as to what extent they differed from each other.

³⁸ Law Commission of Bangladesh, *A Final Report on the Proposed Law of Domestic Violence along with a Draft Bill Namely, the Domestic Violence Act, 200----* (Law Commission's Report No. 71, 29 December 2005) <<http://www.lc.gov.bd/reports/71.pdf>> accessed 9 January 2015, chapter II, Section 3.

³⁹ Ibid, chapter II, Section 19.

punishable offences under the *Penal Code*, 1860 or other laws in force in Bangladesh. In that sense, the real innovation or contribution of the report probably lies in its suggested ways in responding to the offences under the proposed Act. For protecting the victims of domestic violence, the proposed law envisages remedies such as interim protection order and protection order. It also provides for various sorts of counselling supports for victims of domestic violence.

Comments:

Since this report has been prepared with an aim for presenting a draft for a statute for the GOB to consider and adopt, the report endeavours to set out the context for such a law. Hence, it probably does not really intend to capture the root causes of domestic violence or the various forms that it may take. Thus, it appears that there is possibly a scope for further studies in this regard. Some of the assertions in the report, such as the “victims [of domestic violence] are countless in the economically disadvantaged classes”⁴⁰ are claims in conjecture and there is no way for one to be definite if they would factually hold or not. The same ambiguity would probably apply to the finding in the report that “[p]ublic opinion seems to have been mobilized with regard to the making of a new legislation on domestic violence.”⁴¹

Even in the legal context, from some of the provisions (for instance, the provision that any person with reason to believe that an offence under the proposed law is being committed or has been committed, may inform authorities about offences), it would appear that the draft bill does not really go far enough. Indeed, because of the nature of their functions, certain public officials such as doctors, nurses, teachers, priests, and child care professionals, etc. are likely to come across facts which may lead to credible reasons to suspect that an act amounting to domestic violence is occurring or has occurred. Hence, it would seem that they should be subjected to some form of compulsory obligation to report suspected cases of domestic violence.

If we compare the draft of the LCB with the statute passed by the Parliament, entitled *Domestic Violence (Prevention and Protection) Act, 2010*⁴² (*Domestic Violence Act*), then we would note that on some points, the latter is even less ambitious in its scope. For instance, a comparison between Section 3 of the draft bill and Section 3 of the *Domestic Violence Act* would show that while the draft bill proposed by the LCB included even violence against domestic workers, the statute only applies to persons related by blood or marriage or through adoption. Section 11 of the *Domestic Violence Act* provides that an aggrieved person or an enforcement officer (upazilla women affairs officer or a person specifically appointed as an enforcement officer for performing obligations under the *Domestic Violence Act*)⁴³ or service

⁴⁰ Ibid, preface.

⁴¹ Ibid.

⁴² Act No. 58 of 2010.

⁴³ Section 2(14) of the *Domestic Violence Act*, 2010.

provider or any other person *on behalf of the victim* may apply for protection under the Act. Thus, it would appear that under the proposed bill anyone could provide information about prospective offences under it, the *Domestic Violence Act* requires that either the victim or only someone authorised by the victim can apply for protection under the Act. One may contend that as the *Domestic Violence Act* only says ‘any person aggrieved or any person on her behalf’, no authorisation from the victim is required for applying to the court. However, as both Sections 6 and 7, in relevant parts, require that the victim ‘requests’ or ‘gives consent to’ the protection officer or service provider seeking a protection order from the court or recording the incident of domestic violence, it clearly indicates that the Parliament has envisaged victim’s consent as a pre-condition for seeking relief from the courts in domestic violence matters. As the victims may, for various reasons, not be able or willing to seek protection, it is probable that those who would remain unprotected could be protected on the basis of an application by an unrelated third party. For these reasons, a study on the scope for reform of the *Domestic Violence Act* and its implementation in practice may be welcome.

Bibliographic Details:

Law Commission of Bangladesh, *A Final Report on the Proposed Law of Domestic Violence along with a Draft Bill Namely, the Domestic Violence Act, 200----* (Law Commission’s Report No. 71, 29 December 2005) <<http://www.lc.gov.bd/reports/71.pdf>> accessed 9 January 2015

Title of the Study: Analysis of Decisions of the Higher Judiciary on Protection of Women's Rights in Bangladesh

Source of Funds: Bangladesh National Human Rights Commission – Capacity Development Project and United Nations Development Programme

Implementing Body: National Human Rights Commission

Duration of the Project: Not available

Key-words: Women's rights, judicial activism, and application of international law

Summary of the Report:

This report discusses some important decisions of the HCD of Bangladesh relating to the rights of women in Bangladesh. It also briefly mentions the legal framework for protection of women as enshrined in the national statutory provisions and international legal instruments ratified by Bangladesh. The cases discussed in the report relate to acid throwing,⁴⁴ forced marriage,⁴⁵ *fatwa* induced violence,⁴⁶ imposition of dress code,⁴⁷ eve teasing,⁴⁸ abuse of domestic workers,⁴⁹ sexual harassment in educational institutions,⁵⁰ and reserved seats for women in local government bodies.⁵¹ Most of these cases have been filed by NGOs, but some of them have also been filed by individuals.

The report claims that the decisions discussed in it portray a discernible trend of judicial activism and a shift from the traditionally perceived biasness towards males.⁵² It notes that the

⁴⁴ *Tayazuddin and Another v The State* (2001) 21 BLD (HCD) 503.

⁴⁵ *Dr. Shipra Chaudhury and Another v Government of Bangladesh and Others* (2009) 29 BLD (HCD).

⁴⁶ *Bangladesh Legal Aid and Services Trust v Government of Bangladesh* (2010) Writ Petition No. 5863 of 2009.

⁴⁷ *Md. Salahuddin Dolon v Government of Bangladesh*, Writ petition No. 4495 of 2009 (unreported).

⁴⁸ *Bangladesh National Women Lawyers' Association (BNWLA) v Government of Bangladesh*, Writ petition no. 8769 of 2010 (unreported).

⁴⁹ *Bangladesh National Women Lawyers' Association (BNWLA) v Government of Bangladesh*, Writ petition no. 3598 of 2010 (unreported).

⁵⁰ *Bangladesh National Women Lawyers' Association (BNWLA) v Government of Bangladesh* (2009) 14 BLC (HCD) 694.

⁵¹ *Shamima Sultana Seema v Government of Bangladesh* (2005) 57 DLR (HCD) 201.

⁵² Dr. Abdullah Al Faruque, *Analysis of Decisions of the Higher Judiciary on Protection of Women's Rights in Bangladesh* (National Human Rights Commission 2013) <<http://www.nhrc.org.bd/PDF/Study%20reports/Protection%20of%20Women.pdf>> accessed 1 March 2015, at 58.

decisions have defined some gender-based crimes and thus, filled the gaps in the existing statutory framework.⁵³ The report envisages the NHRC to play a pivotal role in raising awareness about the guidelines issued by the HCD in these cases and also in mustering public support for implementing them through organisationing workshops. It also urges the GOB to undertake law reform as charted out in these judicial decisions.

Comments:

The decisions discussed in the report cover a wide array of areas impacting the life of women in Bangladesh. Nonetheless, none of the decisions (except to a limited extent, the decision on *fatwa* induced violence) discussed in the report relates to laws on family law matters and that seemingly indicates lack of reform of religion-centric personal matters and reinforces the need for undertaking such reform. The report rightly argues that the propensity of using international human rights instruments in interpreting national legal provisions is a positive development and may pave for better protection of human rights in Bangladesh.

Somewhat curiously, the report only assesses the implementation of the decision on dress code and concludes that the GOB has not taken initiatives to reform laws as spelled out in the decisions. While some of the judicial decisions covered in the report may have dealt with one-off events (such as the one on acid throwing or forced marriage) or a question on the constitutional validity of a statutory provision (reserved seats for women); many others (the decision on *fatwa* induced violence or eve teasing) are not such and involves wide ranging directives rendered by the HCD. Hence, it would appear that the study would have been much more comprehensive if it evaluated the implementation of the directives rendered in all of the decisions covered by the report.

Bibliographic Details:

Faruque, Dr. Abdullah Al, *Analysis of Decisions of the Higher Judiciary on Protection of Women's Rights in Bangladesh* (National Human Rights Commission, 2013)
<<http://www.nhrc.org.bd/PDF/Study%20reports/Protechtion%20fo%20Women.pdf>>
accessed 1 March 2015

⁵³ Ibid, at 59.

Title of the Study: *Bangladeshe Muslim Paribarik Ainer Porjalochona O Ain Commissioner Kotipoy Suparish* (A Review of Muslim Family Laws in Bangladesh and Some Recommendations of the Law Commission)

Source of Funds: United Nations Development Fund as part of a Project entitled 'Promoting Access to Justice and Human Rights in Bangladesh' implemented by the Ministry of Law, Justice and Parliamentary Affairs of the Government of Bangladesh

Implementing Body: Law Commission of Bangladesh

Duration of the Project: Not available

Key-words: Family law, Muslim family law, Muslim women, Muslim children, and law reform

Summary of the Report:

This report identifies some areas of Muslim family laws, namely polygamy, divorce, adoption, custody and guardianship, restitution of conjugal rights where potential law reform may make the current laws much more equitable for women. The report takes the hypothesis that existing discriminatory legal treatment of women has more to do with literal, context-less, and special-interest driven interpretation of the sources of Islamic law than with any systemic problem with the sources of Islamic law.⁵⁴ The findings in the report are based on survey of respondents, focus group discussions, study of the decisions of the Supreme Court of Bangladesh, studies conducted by NGOs and reference to laws in some other countries where Muslim law prevails in family matters.

The report finds that while for re-marriages a Muslim husband with an existing wife needs to take permission from the Arbitration Council, the provision is often either ignored or the Council decides the application for re-marriage without any real scrutiny of the application.⁵⁵ To remedy this, it recommends that the law should provide that the Arbitration Council would accept an application for re-marriage only on specified grounds.⁵⁶ It also suggests that the Council be strengthened and be made accountable for abusing its powers.

The report notes that although restitution of conjugal rights is a right of both the husband and the wife, as a Muslim husband has unfettered right to divorce; it is impracticable for a wife to avail herself of this right. Discussing decisions of the High Court Division on petition for restitution of conjugal rights, the study observes that these decisions are

⁵⁴ Law Commission of Bangladesh, *Bangladeshe Muslim Paribarik Ainer Porjalochona O Ain Commissioner Kotipoy Suparish* (A Review of Muslim Family Laws in Bangladesh and Some Recommendations of the Law Commission) (Law Commission's Report No. 120, 9 January 2013) <<http://www.lc.gov.bd/reports/120-Final%20Report%20of%20Muslim%20Law-05%20sir%20.pdf>> accessed 9 January 2015, at 2-3.

⁵⁵ Ibid, at 6.

⁵⁶ Ibid, at 6-7.

inconsistent.⁵⁷ It makes a fundamental suggestion that the restitution of conjugal rights being inhuman and unconstitutional; should be abolished.⁵⁸ The report notes that participants in the focus group discussions have opined that a Muslim husband's unfettered right to divorce should be curtailed.⁵⁹

The report notes that regarding past maintenance of wife, the decisions of the courts need to be clarified. It recommends that subject to certain conditions, even after the expiry of the *iddat* period; a divorced wife should be entitled to maintenance from her ex-husband unless and until she re-marries. On the question of guardianship of children, the report notes that discussants in the focus group discussions have opined that in absence of the father, the mother should have guardianship over the body and property of her minor issues.⁶⁰

On the question of adoption, referring to the verses of Al-Quran, the report notes that the religious scriptures only indicate that there is a natural difference between adopted relations and natural relations but they do not contain any injunction against adoption.⁶¹ The report notes that in practice, Muslims do adopt and as the adopted children are not entitled to property of the adoptive parents, they are given property through gifts. In order to reflect social realities and ensure the rights of the adopted children and their adoptive parents, the report suggests that adoption by Muslims should be legally recognised.⁶²

The report discusses the evil effects of *hilla* marriage (a sort of temporary marriage for facilitating the re-marriage between couples who have divorced each other). It finds that a *hilla* marriage is inherently degrading for a woman and if a child is born out of the *hilla* marriage and then the wife is re-married to the ex-husband, the child suffers.⁶³ Often after the *hilla* marriage, since the marriage has been consummated, the ex-husband refuses to remarry the wife putting the wife into further distress. It finds that Islam does not recognise vicarious liability but in case of *hilla* marriage, a wife suffers because of the mistake or impatience of her husband.⁶⁴ The study attributes these evils to either a dogmatic, literal explanation of religious texts or an illogical interpretation for clarifying ambiguities in religious texts.⁶⁵

⁵⁷ Ibid, at 8-9.

⁵⁸ Ibid, at 9.

⁵⁹ Ibid, at 11.

⁶⁰ Ibid, at 15.

⁶¹ Ibid, at 16.

⁶² Ibid.

⁶³ Ibid, at 18.

⁶⁴ Ibid.

⁶⁵ Ibid, at 18-19.

Comments:

Some of the suggestions of the study such as vesting an automatic right in all Muslim women to take recourse to *talaq e tawfid* are quite radical and if implemented, they should make substantial contributions to reduce gender bias in the existing laws. On the other hand, some other suggestions are imprecise and have not been spelled out in any considerable detail. For example, the report suggests that participants in focus group discussions have opined that conditions should be imposed on a Muslim husband's right to re-marriage however it is silent on the type of conditions to be imposed.⁶⁶ The study endorses this suggestion and as is already pointed out has suggested that the Arbitration Council be strengthened but does not provide any outline for such strengthening. Similarly, the study recommends that adoption should be legally recognised and adopted children should have rights over the property of their adoptive parents but leaves the manner for such vesting of property right open. It has also suggested that a specific law for preventing the evils of *hilla* marriages be adopted but has not provided any further guideline on the proposed law.

On another point, it may be submitted that because of the sweeping nature of the recommendation of the study, unintended consequences can ensue. For instance, a wholesale abolition of the right to apply for restitution of conjugal rights may mean that when a person is willing to live with his/her spouse but prevented by his/her relatives; the helpless spouses would lose a legal avenue to pursue. Of course, a *habeas corpus* petition or wrongful confinement/false imprisonment or other similar remedies may be available but the comparative costs and advantages of these alternative remedies should be studied before drawing a definite conclusion. Thus, it would appear that in order to implement some of the suggestions of the study report, more rigorous and thorough study has to be conducted.

Bibliographic Details:

Law Commission of Bangladesh, *Bangladeshe Muslim Paribarik Ainer Porjalochona O Ain Commissioner Kotipoy Suparish* (A Review of Muslim Family Laws in Bangladesh and Some Recommendations of the Law Commission) (Law Commission's Report No. 120, 9 January 2013) <<http://www.lc.gov.bd/reports/120-Final%20Report%20of%20Muslim%20Law-05%20sir%20.pdf>> accessed 9 January 2015

⁶⁶ Curiously, it reports that among the 237 persons surveyed, 85 have suggested that men and women should have equal rights in divorce, 9 have suggested that women should not have equal rights and 4 had no comments; it is not clear what was the response of the rest of the respondents; see Law Commission of Bangladesh, *Bangladeshe Muslim Paribarik Ainer Porjalochona O Ain Commissioner Kotipoy Suparish* (A Review of Muslim Family Laws in Bangladesh and Some Recommendations of the Law Commission) (Law Commission's Report No. 120, 9 January 2013) <<http://www.lc.gov.bd/reports/120-Final%20Report%20of%20Muslim%20Law-05%20sir%20.pdf>> accessed 9 January 2015, at 11.

Title of the Study: Civil Laws Governing Christians in Bangladesh: A Proposal for Reform

Source of Funds: Embassy of the Kingdom of the Netherlands in Bangladesh

Implementing Body: SAILS

Duration of the Project: April 2010 - May 2011

Key-words: Women, Christian personal law, and law reform

Summary of the Report:

This report studies civil laws applicable to members of the Christian community in Bangladesh with particular emphasis on legal issues relating to women's rights in family matters. It surveys the relevant laws and also interviews sixteen people from the Christian community (representing both Roman Catholics and Protestants) in Bangladesh. At the outset, the report notes that the current laws in Bangladesh are often 'obsolete, discriminatory and insufficient.'⁶⁷ The report mentions that being inspired by the amendment of the *Divorce Act* in India, the National Council of Catholic Churches Bangladesh (NCCB) in September 2002, took initiatives for a study on bringing about reforms in Christian personal laws in Bangladesh which found that in many cases there were confusions about the application of canon laws in personal matters.

Bulk of the report consists of 16 case studies and each case is accompanied by a finding on the legal issue/s involved in it, measures that the interviewees took to remedy their problems, and the report's finding on legally recognised remedies that could have been pursued. The case studies involve problems with adultery, bigamy, child marriage, domestic violence, custody and maintenance, and validity of property rights in inter-faith marriages etc. On the basis of the findings from the case studies, the report makes some suggestions for law reforms.

The report recommends that Section 10 of the *Divorce Act*, 1869 be amended so that the inequitable provisions between men and women are dispensed with. In particular, it suggests that the grounds for dissolution of marriages to be expanded and include adultery, bigamy, or rape, desertion for 2 years, insanity, or any disease which makes cohabitation impossible, or such physical, sexual, mental, or economic cruelty which would entitle a petitioner to live separately from her/his spouse. It recommends that the requirement that a decree of dissolution of marriage or nullity of marriage would have to be confirmed by the HCD, be abolished. Similarly, it recommends that the provision that a spouse can claim compensation from a co-respondent adulterer be abolished. It argues that since there is no corresponding provision in favour of a wife; the provision that when a wife is engaged in adultery, the judge can settle the property in favour of the husband and children is discriminatory and should be changed. The report opines that in matters under the *Divorce*

⁶⁷ Faustina Pereira, *Civil Laws Governing Christians in Bangladesh: A Proposal for Reform* (South Asian Institute of Advanced Legal and Human Rights Studies, 2011), at 8.

Act, 1869; the Family Court should be the court of first instance and the Court of District Judge should be the appellate Court.

The report notes that within the Christian community, there is a demand for a law on adoption. It recognises that there is no statutory law prohibiting adoption but at the same time there is no such law specifically enabling it. Since, adoption is permitted under the religious laws; the report suggests that a law may be adopted to fill this void. According to the report, from the point of view of gender parity, the law applicable to the community is basically equitable but wants to see that an adopted child's right to inherit property of the adoptive parents is recognised and mother of an intestate inherits on an equal footing with the father.

Regarding inter-faith marriages, the report recommends that the stipulation in the *Special Marriage Act*, 1872 that those who want to marry under this law must renounce their faiths, should be abolished. It also points out that due to discrepancies between religion-based personal laws and this statutory law; there are some unresolved issues which may surface about the validity and the legal rights to property in case of inter-faith marriages. The report finds that the *Births, Deaths and Marriages Registration Act*, 1886⁶⁸ only requires the Registrar-General to keep proper indexes of the certified copies of marriages solemnised under the *Special Marriage Act*, 1872 and the *Christian Marriage Act*, 1872;⁶⁹ but it actually does not cover any provision for mandatory registration of marriages and divorces within the Christian community. It wants to see such a provision emerge and also wants more Marriage Registrars to be appointed for registering inter-faith marriages.

Comments:

While the number of interviewees is rather low, the breadth of the issues presented through them is quite broad and may well have encapsulated the main problems confronted by members of the Christian community in Bangladesh in their family matters. From the viewpoint of human rights, most of the recommendations seem to be justified. However, the merit and demerits of some of the suggestions such as the one on changing jurisdiction of courts are not so straightforward and may worth further study. A major constraint of the recommendations are that it is not clear as to what extent they would be compatible with the values of the broader community and particularly, with priests and the Church. As the case studies demonstrate that members of the community often resort to the priests and the Church for resolution of their family related disputes; it would seem that any legal reform without some sort of endorsement or engagement with priests and the Church may fall short of its desired impacts.

Bibliographic Details:

Pereira, Faustina, *Civil Laws Governing Christians in Bangladesh: A Proposal for Reform* (South Asian Institute of Advanced Legal and Human Rights Studies, 2011)

⁶⁸ Act No. VI of 1886.

⁶⁹ Act No. XV of 1872.

Title of the Study: Combating Gender Injustice: Hindu Law in Bangladesh

Source of Funds: Embassy of the Kingdom of the Netherlands in Bangladesh

Implementing Body: South Asian Institute of Advanced Legal and Human Rights Studies

Duration of the Project: April 2010 to May 2011

Key-words: Family law, Hindu family law, and reform of Hindu law

Summary of the Report:

This study thoroughly chronicles the various forms of discriminatory treatments that Hindu women suffer in family matters i.e. marriage, dissolution of marriage, maintenance, adoption, and inheritance. It refers to the national legal provisions (constitutional guarantee of equal rights of all citizens) and a policy instrument adopted (the Women Policy, 2011) as well as international legal instruments (*Convention on the Elimination of All Forms of Discrimination against Women*, [CEDAW] *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*) that Bangladesh has ratified which should protect women from all forms of gender based discrimination but in fact fails to do so because of discriminatory legal provisions. It makes an interesting observation that since Bangladesh's reservation to Article 2 of the CEDAW is made with direct reference to *sharia* law (orthodox Muslim law); it should have binding force as regards the obligation of the state with respect to people professing other religions.⁷⁰ With reference to the relevant orthodox religious texts, statutory provisions, and precedents of the Supreme Court, the report shows how the reliance on orthodox Hindu laws in contemporary social structure is giving rise to unequal treatment of Hindu women in family matters.

It shows that as the Hindu Law applied in Bangladesh do not allow divorce, a woman undergoes immeasurable suffering when she is deserted by her husband and left with no legal remedy. Similarly, as polygamy is permitted but polyandry is prohibited, women are discriminated. The report notes that though an inter-caste marriage between Hindus is legally prohibited, it frequently does take place and most Hindus surveyed state that in this era such a bar should be dispensed with. With regard to the lack of provision for registration of marriages, the report finds that not only that the parties used to suffer but often the court's time and resources are wasted in determining cases such as those on maintenance, legitimacy of children, dowry - where existence of a valid marriage may be at issue.⁷¹ Similarly, even in non-litigation matters for enjoying certain rights such as obtaining pension upon the death of a husband, for Hindu spouses who were government employees to be posted in the same locality or obtaining visa for spouses; lack of documentary evidence could create hurdles. The report discusses that as a female child cannot legally be adopted, this again is a

⁷⁰ Shahnaz Huda, *Combating Gender Injustice: Hindu Law in Bangladesh* (South Asian Institute of Advanced Legal and Human Rights Studies, 2011) at 11.

⁷¹ *Hindu Marriage Registration Act*, 2012 is now in force but the registration of Hindu marriages is only optional under this law; see section 3 of the Act.

discrimination against women. With regard to the property rights, the report notes that women heirs (save in case of *stridhan*)⁷² only enjoy limited rights over property and upon their death, the property goes not to their heirs but to the heirs of the men from whom they inherited. Moreover, a Hindu woman can alienate inherited property only in very narrowly defined cases of legal necessity.

The study contains the draft for legislative reforms as suggested by the Law Commission, Human Rights Congress of Bangladesh Minorities, and Coalition for the Preparation of a Draft Hindu Marriage Law. With regard to the reform of the existing legal provisions, the report concludes that there is a moral case for a uniform family code applicable to all people in Bangladesh, but due to the devout commitment of the wider population to their religious beliefs that option is hardly a palatable choice for any political government in Bangladesh, it concedes.

As an alternative, the report construes that the *Special Marriage Act*, 1872⁷³ can be amended or replaced along the lines of the *Special Marriage Act*, 1954 of India so that it gives people broader freedom to live beyond the bounds demarcated by their archaic religious laws. The Indian law on this point is more liberal as, for instance, it does not require that the persons who would register their marriages under this law must relinquish their respective religious faiths. The report cautions that the reform of Hindu family laws must not be superimposed rather must reflect the values of the broader Hindu community. Otherwise, not only there would be misgivings about the motives of the reform but more importantly in practice they would remain largely ignored by those who should practice them.

Comments:

The report's value lies in its thorough treatment of the legal provisions, anecdotal case studies, and charting the diverse options for legal reform. Interestingly, the report notes that the legal reform in India has been quite thorough and time consuming (ranging from 1941 to 1952) but the driving force behind the reform was not any public demand rather the assumption of the responsibility by the state itself.⁷⁴ It may be interesting to examine why the state assumed that responsibility and even more importantly how the formidable forces against reform may have been countered. In this regard, a particularly important question may be whether the reform took place on the basis of a liberal interpretation of orthodox legal texts or simply upon a conviction for reform reflecting the values of a more liberal society even if they did not follow the dictates of the religious texts. Though the context of the two countries may differ, such insight may, nonetheless shed some light on the options for legal reform in Bangladesh.

⁷² *Stridhan* basically means those properties which a Hindu woman may receive by way of gift and over this type of property, a woman enjoys full rights.

⁷³ Act No. III of 1872.

⁷⁴ Ibid, at 14 referring to Parashar, *Women and Family Law Reform in India – Uniform Family Code and Gender Equality* (Sage Publications, 1992) at 81.

As currently there is a legal mechanism for registration of Hindu marriages, a study may be conducted to assess as to what extent marriages solemnized since the commencement of the law is being registered. The study should also investigate what factors are encouraging people to use or not to use the option of registration of marriages. This legislative intervention though a modest one, a study on its positive effects could possibly encourage more and more people within the Hindu community to be less defensive about further and more wide-ranging legal reforms in their family laws.

Bibliographic Details:

Huda, Shahnaz, *Combating Gender Injustice: Hindu Law in Bangladesh* (South Asian Institute of Advanced Legal and Human Rights Studies, 2011)

Title of the Study: Exploring the Experiences of Male Perpetrators of Violence against Women in Bangladesh: A Qualitative Study

Source of Funds: Manusher Jonno Foundation

Implementing Body: Naripokkhkho

Duration of the Project: Not available

Key-words: Violence against women, and perpetrators of violence against women

Summary of the Report:

This study seeks to explore the experiences and viewpoints of perpetrators of violence against women as regards the factors contributing to their wrongful behaviours. In identifying perpetrators, this research takes a broad approach, that is persons convicted of violence against women as well as persons against whom such violence has been alleged and they have admitted the complaints brought against them, have also been included.⁷⁵ It embarked upon exploring in detail 47 cases of violence against women and of them 14 cases were excluded from the analysis because the research team could not gather sufficient information on those cases.⁷⁶ Of these 33 cases, in 20 cases, additional information on the perpetrators had been obtained from their homes and communities for conducting more complete and credible analysis.⁷⁷ This study notes that during 2001-2008, there had been 1,15,493 reported incidents of violence against women in Bangladesh.⁷⁸

Perhaps rather unsurprisingly, the study observes that perpetrators tended to blame the victims, society, or their parents for their violent acts.⁷⁹ Such blaming is at times quite paradoxical. For instance, while some have said that sexual assaults are attributable to women's seductive dresses, some others have claimed that women covering themselves in veil arouse curiosity and may ignite the urge for committing sexual assaults.⁸⁰ Similarly, while perpetrators generally viewed women as weak, some of them accused women of a failure for not using their power to morally police men in society.⁸¹ Some perpetrators said that a sort of feeling of vulnerability driven by stress or poverty led them to lose self-control

⁷⁵ Naripokkhkho, *Exploring the Experiences of Male Perpetrators of Violence against Women in Bangladesh: A Qualitative Study* (2010), at 21-22.

⁷⁶ Ibid, at 22.

⁷⁷ Ibid, at 26.

⁷⁸ Ibid, at 10. The violent acts include violence for dowry, acid throwing, abduction, rape, murder after rape, trafficking, murder, injury, and other forms of violence.

⁷⁹ Ibid, at 30.

⁸⁰ Ibid, at 31.

⁸¹ Ibid, at 47.

and be violent towards women.⁸² The study observes that in a patriarchal society like Bangladesh violence against women can often be a masculine way of relieving a feeling of helplessness or a response to rejection or betrayal by women.⁸³ It notes that the cases show either directly or indirectly a perception of superiority of men over women and violence is often a means of asserting such superiority.⁸⁴ Troubled family background that is a troubled marriage between the parents was a near universal feature among perpetrators which meant that they often had a perception that violence against the intimate partner is not objectionable.⁸⁵

The study recommends that for building a healthy family, there is a need for provision of community services which may include teaching parents and primary caregivers on bringing up children so that the latter do not become perpetrators of violence against women.⁸⁶ The research opines that education on gender and violence should commence from the school so that stereotypical narratives demeaning women can be confronted at a very early age before they become ingrained.⁸⁷ For ensuring psychological treatment for violent men, the research recommends that launching anger management programmes can be useful.⁸⁸ It also recommends that awareness raising programmes for dispelling derogatory attitude towards women should be undertaken through electronic media in the form of films, television dramas, and theatres, etc. The report claims that while the existing legal structure for dealing with violence against women is tough on paper; the enforcement of the mechanism has been lacklustre which takes away their supposed deterrent effect.⁸⁹ Hence, it calls for a review of the existing legal framework on violence against women.⁹⁰

Comments:

While in terms of the design, this research is unique, the extremely low size of the sample compared to the number of occurrences of violence against women raises a question about its representativeness. It is also noticeable that all perpetrators interviewed as part of this study are men and so, the perception of women perpetrators of violence against women is missing in this report. The study observes that many perpetrators expressed a view that the

⁸² Ibid, at 32-33.

⁸³ Ibid, at 33-35.

⁸⁴ Ibid, at 38.

⁸⁵ Ibid, at 42.

⁸⁶ Ibid, at 49.

⁸⁷ Ibid, at 50.

⁸⁸ Ibid, at 52.

⁸⁹ Ibid, at 55.

⁹⁰ Ibid.

intermingling of sexes in adolescent age, particularly a romantic relationship can be problematic as the youth may be oblivious to their family status, responsibilities, or social norms.⁹¹ However, given that the pre-dominant social norm is patriarchal, how non-responsiveness to social norms may fuel violence against women is unclear. Similarly, the nexus between oblivion to family status and violence against women is also not clear and these issues may be explored in greater detail. Having said these, as a sort of pilot study, the observations of this study may be used for embarking on more intensive and specific research on violence against women in Bangladesh.

Bibliographic Details:

Naripokkhkho, *Exploring the Experiences of Male Perpetrators of Violence against Women in Bangladesh: A Qualitative Study* (2010)

⁹¹ Ibid, at 42.

Title of the Study: From Evidence to Policy: Addressing Gender-Based Violence against Women and Girls in Bangladesh

Source of Funds: Department for International Development

Implementing Body: ICDDR,B and Population Council

Duration of the Project: Not available

Key-words: Gender, girls, and violence

Summary of the Report:

With a view to making policy recommendations on the pattern of violence against women and girls, this report conducts interviews, and collects and interprets data. A noticeable feature of the report is its extensive reference to many other relevant existing literatures and the analysis of its findings with reference to them. The report contains three distinct papers the first of which presents detailed statistical findings on violence against women and girls. The data used in this part of the report are derived through a national survey of adolescent boys and girls (ranging between ages 10 to 24), both unmarried and married, conducted in 2005.⁹² The second paper is based on the sample of 10,996 women aged 15 to 49, who have ever been married (i.e. including married/divorced/widowed).⁹³

The third paper provides a snapshot on community perception on potential means for prevention of violence against women and girls. Data contained in this paper, have been collected through 14 key informant interviews and 24 focus group discussions that took place in Jamalpur and Faridpur districts between July and September 2012.⁹⁴ This part of the report observes that villagers are largely unaware of the presence of any specialised care providers who are equipped to serve the needs of women and girls, who are victims of violence.⁹⁵ The report finds that in cases of violence occurring within families, only when negotiations within the family or the community based informal justice mechanism fails, women and girls tend to opt for seeking justice through formal judicial mechanism.⁹⁶ And even when they do seek remedies through formal judicial mechanism, they often have to relent due to the community

⁹² ICDDR,B and Population Council, *From Evidence to Policy: Addressing Gender-Based Violence against Women and Girls in Bangladesh* (2013) <http://r4d.dfid.gov.uk/pdf/outputs/ORIE/VAWG_Bangladesh_Final_Report.pdf> accessed 22 April 2015, at 4.

⁹³ Ibid, at 28.

⁹⁴ Ibid, at 52, 56.

⁹⁵ Ibid, at 60.

⁹⁶ Ibid, at 60-63.

and family pressure exerted on them and may again be forced to suffer the same type of violence.⁹⁷

The report observes that patriarchal stereotypical notions promoting a culture of shaming victims, fear of infliction of further violence, economic dependence, and corrupt practices etc. inhibit women victims of violence and abuse from seeking justice.⁹⁸ The report finds that sensitisation and awareness building programmes conducted through schools, local governments, NGOs, local male and female youth clubs, and mosques can play a pivotal role in combating violence against women and girls. It notes that many male participants in the FGDs emphasised that the employment of men, on the other hand, female participants emphasised that the employment of women being an important tool for reducing this type of violence.⁹⁹

The report notes a general lack of knowledge about the existence of the *Domestic Violence Act*.¹⁰⁰ The female participants taking part in the discussions underscored the importance of educating the rural elites and elected representatives of the local government bodies and putting in place some sort of complaint box which should be handled by law enforcing agencies directly, the report notes.¹⁰¹ Similar need has been pressed regarding the desire for more female presence in *Shalish* and accepting women as competent to testify in all sorts of trials.¹⁰² The report argues that restorative justice, focusing on the needs of the victims; rather than placing more concern on the punishment of the perpetrator is necessary.

Comments:

Because of the breadth of its literature review and its extensive scope, this report should be useful. Nonetheless, it appears that some of the findings of the report would beg more analysis. The findings of the report that compared to unmarried girls of similar age group, boys suffer more incidents of violence, and that married adolescent girls suffer less incidents of violence than their unmarried counterparts,¹⁰³ are quite interesting. It would challenge the common perception of women being more badly treated than their male counterparts. The report also notes that older women tend to experience much less violence than younger women.¹⁰⁴ Thus, it may be an interesting question for specialists to explore why

⁹⁷ Ibid, at 63-64.

⁹⁸ Ibid, at 64-71.

⁹⁹ Ibid, at 79.

¹⁰⁰ Ibid, at 79-80.

¹⁰¹ Ibid, at 81.

¹⁰² Ibid, at 85.

¹⁰³ Ibid, at 8, 9, and 18.

¹⁰⁴ Ibid, at 44.

women of a certain age group tend to suffer more from violence or abuse.

Similarly, the report observes that women engaged in income generating works are more likely to experience violence (it does not specify whether this violence takes place within homes or at workplaces).¹⁰⁵ The finding that women engaged in income generating works experience more violence is curious as conventional wisdom may suggest that they should be more empowered than their non-income earning counterparts. This would imply that the mere empowerment of women through augmenting the scope for income generating activities may not be a very effective tool against them falling victims to violence. Thus, it may be fairly said that these issues merit a more detailed empirical analysis for them to be used as tools for more effective intervention and policy making.

Bibliographic Details:

ICDDR,B and Population Council, *From Evidence to Policy: Addressing Gender-Based Violence against Women and Girls in Bangladesh* (2013)
<http://r4d.dfid.gov.uk/pdf/outputs/ORIE/VAWG_Bangladesh_Final_Report.pdf> accessed 22 April 2015

¹⁰⁵ Ibid, at 22, 44.

Title of the Study: *Hindu Paribarik Ain Songskarer Suparish Bishoyok Ain Commissioner Churanto Protibedon* (Final Report of the Law Commission relating to the Recommendations on Reform of Hindu Personal Law)

Source of Funds: United Nations Development Fund as part of a Project entitled ‘Promoting Access to Justice and Human Rights in Bangladesh’ implemented by the Ministry of Law, Justice, and Parliamentary Affairs of the Government of Bangladesh

Implementing Body: Law Commission of Bangladesh

Duration of the Project: Not available

Key-words: Family law, Hindu family law, and law reform

Summary of the Report:

This report identifies possible reforms that may be made in the eight specific areas of orthodox Hindu family laws, namely registration of marriage, divorce and remarriage, polygamy, inter-caste marriage, adoption, removal of disabilities in acquiring properties by certain groups, inheritance right of Hindu women, and maintenance and guardianship of children so as to ensure greater gender equality and reflect the needs and values of a modern society. The report uses field level research conducted by NGOs and the draft for law reform put forward by them. It also mentions the responses of a survey of 246 respondents and 3 focus group discussions.¹⁰⁶ It considers the prior report of the Commission prepared in 2000 on the scope for reform of Hindu family laws.

By briefly mentioning the legislative changes in British era, the report mentions that the reform of Hindu family laws is no new phenomenon. With regard to the question of registration of Hindu marriages, those who consider any reform redundant contends that the proposed provision would encourage solemnization of marriages in exclusion of religious rituals which would alter the religious character of Hindu marriages, it cites.¹⁰⁷ The report recommends that while non-registration of a Hindu marriage may not affect its legal validity, at least a minimal fine and imprisonment for non-registration of a marriage should be imposed. It submits that in every *upazilla*, a registrar may be appointed for registration of Hindu marriages.¹⁰⁸

The report suggests that some Hindu *rishis* have suggested occurrence of special cases (like the death of a husband, or if a husband is missing, or impotent, or becomes a monk, or

¹⁰⁶ Law Commission of Bangladesh, *Hindu Paribarik Ain Songskarer Suparish Bishoyok Ain Commissioner Churanto Protibedon* (Final Report of the Law Commission relating to the Recommendations on Reform of Hindu Personal Law) (Law Commission’s Report No. 119, 7 August 2012) <<http://www.lc.gov.bd/reports/119-%20Hindu%20Law-%20Final.pdf>> accessed 9 January 2015, at 1-2.

¹⁰⁷ Ibid, at 5.

¹⁰⁸ Ibid, at 6.

converts to another religion) may entitle a lady to remarry.¹⁰⁹ It points out that the advocates of sticking to orthodoxy claim that allowing re-marriage may mean that divorced ladies would lose the security offered by a family and may be forced to engage in prostitution or other immoral or criminal activities.¹¹⁰ The Commission rightly dismisses this claim as it cannot trace any empirical evidence in its support and recommends that those reasons which would generally entitle a Hindu wife to obtain separate residence with maintenance may also entitle her to acquire a decree for divorce from a competent court.¹¹¹ And it recommends that upon divorce, both of the divorcees should be entitled to remarry.¹¹²

The report finds that it is quite uncommon among Hindus to practice polygamy and if polygamy without sufficient reasons are punished; that would discourage this even further. Hence, it recommends that engaging in polygamy without sufficient reasons and without following legally stipulated formalities should be a punishable offence.¹¹³ Regarding inter-caste marriages, the report notes that in practice; most of the Hindus in contemporary era put much more emphasis on economic and other factors than on caste.¹¹⁴ For these reasons, this study advocates that inter-caste marriages should be legally permissible.¹¹⁵

On the issue of adoption, it notes that there is no cogent reason for the absence of any provision for adoption of a girl. It also proposes that widows should have an unfettered right to adoption and in case of a married couple a suggestion is made that convergence of opinion of both spouses may be made obligatory for a valid adoption.¹¹⁶ The report opines that when special laws for the protection of persons with disabilities are being crafted; there is no reason for them to be deprived of the right to inherit property as they currently are under the existing *Dayabhaga* school of Hindu law.¹¹⁷ In a similar vein, it suggests that the lack of chastity cannot be a reason for ineligibility for inheritance of property.¹¹⁸

The report cites that those who are against the introduction of a full-fledged property right of women decries that if that happens, women may not be unable to cling on to their

¹⁰⁹ Ibid.

¹¹⁰ Ibid, at 7.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid, at 8.

¹¹⁴ Ibid.

¹¹⁵ Ibid, at 9.

¹¹⁶ Ibid, at 10.

¹¹⁷ Ibid, at 10-11.

¹¹⁸ Ibid, at 11.

inherited property and be compelled to alienate their properties to influential quarters in exchange of inadequate consideration.¹¹⁹ Refuting this concern, the report argues that a patronising attitude towards women and depriving them on the plea that they are incapable of holding on to their property cannot be morally justified.¹²⁰ Regarding another concern associated with the recognition of Hindu women's absolute right to inherit property that such a right would encourage men of other faiths to seduce Hindu women, it argues that such concern is unfounded as conversion would disentitle a Hindu woman from inheriting property.¹²¹ The report suggests that the law should require that an economically solvent woman be obliged to provide for the maintenance of her issues if the husband is unable to earn due to accident, infirmity, or other legitimate reasons.¹²²

The report points out that the forces against any significant reform of Hindu family laws in Bangladesh though are few in number are a concerted group and are capable of exerting pressure in various forums.¹²³ On the other hand, according to the LCB, while the proponents of reform are large in number they are not an organized force and are unable to express their views vigorously.¹²⁴ The report also mentions that the statutes that have been passed in India for reforming classical Hindu laws. And it also notes that similar reforms of Hindu family laws have occurred in Nepal.

Comments:

The suggestions made in the report are progressive and they are also endorsed by a large majority of the respondents. From the viewpoint of gender equity and values of a progressive society, the recommendations are pretty much justified. While from a human rights and progressive point of view, one would be encouraged that this report by the Law Commission has diagnosed a paradoxical challenge that the forces against reform though may reflect views of a smaller group are nonetheless a very organized group; it is regrettable that the report has not provided any meaningful way to confront this formidable force. Without this, it may be surmised that any suggestion for reform as justified as it seems, would remain elusive. Another limitation of this study is the scanty details that it contains on each of the reforms it suggests. In fact, it would not be improper to say that this study has presented a very broad guideline for each relevant area of reform and more detailed study has to be done for undertaking actual legal reforms.

¹¹⁹ Ibid, at 12.

¹²⁰ Ibid.

¹²¹ Ibid, at 12-13.

¹²² Ibid, at 14.

¹²³ Ibid, at 15.

¹²⁴ Ibid.

Bibliographic Details:

Law Commission of Bangladesh, *Hindu Paribarik Ain Songskarer Suparish Bishoyok Ain Commissioner Churanto Protibedon (Final Report of the Law Commission relating to the Recommendations on Reform of Hindu Personal Law)* (Law Commission's Report No. 119, 7 August 2012) <<http://www.lc.gov.bd/reports/119-%20Hindu%20Law-%20Final.pdf>> accessed 9 January 2015

Title of the Study: Marriage, Inheritance and Family Laws in Bangladesh: Towards a Common Family Code

Source of Funds: UNESCO

Implementing Body: Women for Women

Duration of the Project: Not available

Key-words: Women rights, gender based discrimination, and uniform family code

Summary of the Report:

This study analyses the laws discriminating against women and explores the case for the adoption of a uniform family code in Bangladesh. It contains a detailed description of laws on marriage, maintenance, divorce, guardianship and custody of children, and inheritance as applicable to Muslim, Hindu, Christian, Buddhist, and tribal women.¹²⁵ To exemplify the various issues discussed, it contains fifteen case studies.¹²⁶ The study notes that the GOB has formulated national policy instruments on women such as the National Policy on Women and National Action Plan on Women's Development, but these instruments are silent on the exact allocation of funds for materialising the objectives set in them and in terms of their planned programme of activities for ensuring gender equality, they are not elaborate enough.¹²⁷ It mentions that NGOs such as Bangladesh Mahila Parishad and Ain o Salish Kendra have drafted model uniform family code for all citizens in Bangladesh.¹²⁸

The study mentions that forced marriage is a serious problem which occurs almost in every corner of Bangladesh but is particularly prominent in Sylhet region where in a bid to preserve 'religious or cultural identity', some expatriate Bangladeshis bring girls (and sometimes even boys) born and brought up in the United Kingdom and then coerce them into getting married against their will.¹²⁹ When marriage between indigenous and non-indigenous individuals takes place with one of the spouse having another living spouse, sometimes there can be uncertainty about the priority over conflicting claims to inheritance.¹³⁰ It points out a legal anomaly that while the solemnisation of the marriage of a minor is a criminal offence,

¹²⁵ Women for Women, *Marriage, Inheritance and Family Laws in Bangladesh: Towards a Common Family Code* (2005), 17-54.

¹²⁶ Ibid, at 77-94.

¹²⁷ Ibid, at 13.

¹²⁸ Ibid, at 15.

¹²⁹ Ibid, at 57-58.

¹³⁰ Ibid, at 58-59.

the law recognises the validity of such a marriage and although Islamic law has provision on nullifying the marriage upon the attainment of the age of puberty, the conditions attached with the right makes it very difficult to exercise.¹³¹ The study points out that while under Islamic law, consent of adult parties to a marriage is mandatory for it to be treated as a valid marriage, practical option for women to exercise this right is very limited.¹³² The report finds that only in the Christian community, the consent of the parties to a marriage is verified through a scrupulous process.¹³³

According to this study, since the mandatory requirement of registration of Muslim and Christian marriages is not backed up by any significant punishment for its violation, non-registration is common place and this often leads to further complexities in cases of abandonment of wife, widowhood, divorce, polygamy, or even forced prostitution.¹³⁴ It argues that the husband's unfettered right to divorce vis-à-vis the wife's limited right to divorce is incompatible with the notion of Islamic jurisprudence that marriage is a contract between man and woman.¹³⁵ It points out that the absence of any provision for divorce causes hardship to Hindu women and in Christian law too, women's right to divorce is more constrained than that of men.¹³⁶ With regard to the matter of maintenance of wife and children, and custody and guardianship of children, the report similarly points out that women are discriminated across religions.¹³⁷

According to the study, the provision of minor penalty or imprisonment of a Muslim husband for re-marriage while another wife is living, is incongruous as despite such punishment, the second marriage remains valid and the husband can get rid of the first wife simply by exercising his unfettered right to divorce.¹³⁸ This report posits that a strong argument in favour of a codified law in family matters as opposed to religion or custom based law is that the latter group lacks the certainty that former has and thus, are susceptible to conflicting interpretations by religious or community leaders.¹³⁹ On the other hand, it concedes that those who are opposed to such uniform codified law may point out that any Bangladeshi citizen has the freedom to opt to marry under the *Special Marriage Act* and even

¹³¹ Ibid, at 60-61.

¹³² Ibid, at 62.

¹³³ Ibid.

¹³⁴ Ibid, at 63-64.

¹³⁵ Ibid, at 66.

¹³⁶ Ibid, at 66-67.

¹³⁷ Ibid, at 69-74.

¹³⁸ Ibid, at 75.

¹³⁹ Ibid, at 96 - 97.

many of the advocates of a uniform family code have not availed that option.¹⁴⁰ Religious orthodoxy aside, the opposition of the Hindu community to broad legal reform through the adoption of a uniform family code is that they would lose their distinct Hindu identity and culture and Hindu women may be allured to convert and marry men of other faiths who have evil designs to take their property away.¹⁴¹ The study observes that because of their upbringing, often women are unsure of exercising their legal rights and thus, the efforts on gender sensitivity have to target women too.¹⁴²

The study recommends that in order to prevent fraud, a mandatory requirement of 15 days' notice with details of the bride and bridegroom before solemnisation of any marriage be introduced.¹⁴³ It also recommends that within 15 days of solemnisation of any marriage, it should be registered irrespective of the religious identity of the parties to the marriage.¹⁴⁴ For the sake of equity, the study wants that the grounds for divorce be identical for both the spouses.¹⁴⁵ The law should specify that upon divorce or separation, within a certain time limit the maintenance amount must be paid off by the husband, it argues.¹⁴⁶ The study wants legal recognition of women's right to property acquired during the subsistence of a marriage.¹⁴⁷

Comments:

The study's recommendation on the requirement of giving advance notice, 15 days ahead of solemnisation, may help to prevent fraud. Its pragmatic approach to a uniform family code is probably realistic. The uniform family code should be the outcome of a consultative and engaging process involving all sectors and religious communities. It appears that possibly in a country where religion has a significant role in the lives of many of its citizens, the argument of the study that the law reform agenda should seek to explore just and fair interpretation of the religious scriptures and cannot reject them in totality,¹⁴⁸ is logical.

¹⁴⁰ Ibid.

¹⁴¹ Ibid, at 97.

¹⁴² Ibid, at 98.

¹⁴³ Ibid, at 101.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid, at 101-102.

¹⁴⁶ Ibid, at 102.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid, at 2.

Bibliographic Details:

Women for Women, *Marriage, Inheritance and Family Laws in Bangladesh: Towards a Common Family Code* (2005)

Title of the Study: Muslim Women's Rights under Bangladesh Law: Provisions, Practices and Policies related to Custody and Guardianship

Source of Funds: Embassy of the Kingdom of the Netherlands in Bangladesh

Implementing Body: South Asian Institute of Advanced Legal and Human Rights Studies

Duration of the Project: June 2010 to May 2011

Key-words: Family law, Muslim family law, law reform, and custody and guardianship of children

Summary of the Report:

This report analyses the legal provisions and practices relating to custody and guardianship of children to assess how much they provide for equal treatment of women vis-à-vis men. At the outset, it notes that unlike some other areas of Muslim personal laws, these two areas have remained almost untouched by the statutory reforms of classical Muslim *shariah* based laws. Even when progressive interpretations such as the consideration of the welfare of children have occurred, they have been driven by the consideration of children's rights and not by any desire for the recognition of women's equal legal status under personal laws.

The report finds that the decisions of the judiciary, particularly the higher judiciary have through progressive interpretations made some changes which reduce the hardship faced by mothers under the classical Islamic laws. Most important of them is perhaps the recognition that welfare of children would trump the scriptures of the orthodox law. While under the *shariah* based law, mother was perceived to have lost the right to custodianship upon re-marriage to a stranger to the child, the courts now hold that upon such a marriage mother would only lose her preferential right, not the right altogether. In consonance with the general thesis of the study that women's rights have been neglected, it finds that under the precedents, it is not the rights of the disputing parties that would be the decisive factor; rather it would be the welfare of children.

The report raises a concern that in many cases the decisions of the lower courts are awarded *ex parte* which it says is attributable to allegedly deliberate non-service of summons in connivance with one of the disputing parties.¹⁴⁹ It finds that because of the fluidity of the concept of 'welfare of the children', there is a possibility of conflicting interpretations and in some cases, the discretion has been exercised in such ways that they may not necessarily be said to have served the best interests of the child, it claims.¹⁵⁰ The report asserts that unlike the higher courts, the lower courts give much more preference to orthodox family laws than

¹⁴⁹ Sara Hossain, (ed), *Muslim Women's Rights under Bangladesh Law: Provisions, Practices and Policies related to Custody and Guardianship* (South Asian Institute of Advanced Legal and Human Rights Studies, 2011) at 24.

¹⁵⁰ Ibid, at 22.

to the doctrine of welfare of children. It finds that in considering the welfare of the child, courts generally take into account of the opinion of the child, but rightly casts a doubt as to whether minors are capable of forming sound judgments as regards guardianship of their property. The report states that the judges sometimes interview the child either in their own chambers or sometimes treat them as a regular witness and allow them to go through examination and cross-examination by lawyers of both parties. Because of their potential adverse impact on the children's psyche, these ways of eliciting the children's view may not be conducive to their wellbeing, it argues.

As regards the determination of applicable personal law that is the law to which the minor is subject to, the report notes that there are conflicting decisions for dealing with situations when a minor converts to a religion different from that of the parents. Often to get a more expeditious remedy in custody matters, parties move to the courts of executive Magistrates or the High Court Division, the report notes. It finds that the decisions of the Magistrates are very brief and generally lack any reasoning which renders them very difficult to review or monitor.¹⁵¹ The report finds that there is a propensity of a very significant chunk of cases to be settled out of court which saves time and resources of the parties as well as the courts and it claims that this may somewhat favour women as they generally would have lesser financial resources than men. However, in a patriarchal society such as Bangladesh, out of court settlements may tend to favour men over women, the report concedes.

The report advocates for an amendment of Section 19 of the *Guardians and Wards Act*, 1890¹⁵² paving the way for both parents to be legal guardians of children. It recommends that guidelines incorporating explanatory examples in the statute on what would constitute the welfare of children may be adopted. For ensuring greater speciality and ease of the litigants, it wants to see dedicated family court judges or dedicated days in every week for settling family suits. It suggests that in order to oversee the handling of minor's property by court appointed guardians; a court officer may be appointed who would scrutinise the statements of income and expenditure relating to the minor's property. It also wants to see that steps such as developing a memorandum of understanding between judges of different jurisdictions and signing and ratification of the *Hague Convention on the Civil Aspects of International Child Abduction*, 1980 are taken, so that problems in dealing with cases involving parties from multiple jurisdictions are better managed.

Comments:

Interestingly, the report has identified that there is a need for research on Muslim Law of adoption (or more appositely on its absence). The report's observation that deliberate non-service of summons sometimes occurs is a matter of grave concern and may itself merit a thorough study on its causes and ways for prevention. The report draws its conclusion on the practice of lower courts on the basis of a very limited set of data collated from the case

¹⁵¹ Ibid, at 23-24.

¹⁵² Act No. VIII of 1890.

records in 3 family courts in Dhaka and courts in Manikganj. More importantly, the observations on the practice of lower courts (where an overwhelming majority of custody and guardianship cases are settled) are made without any detailed description of the findings of these cases and there is no scope for readers to explore or interpret them on their own. Another limitation of the report is that whereas female relatives such as the sister, grandmother, aunt etc. can be an important party in custody disputes (particularly when the mother is absent); it has almost entirely devoted its analysis on the case of mother in relation to custody and guardianship disputes of her children. Thus, it cannot be treated as a complete depiction of Muslim women's rights in these disputes.

Bibliographic Details:

Hossain, Sara (ed), *Muslim Women's Rights under Bangladesh Law: Provisions, Practices and Policies related to Custody and Guardianship* (South Asian Institute of Advanced Legal and Human Rights Studies, 2011)

Title of the Study: Reasons for the Low Rate of Convictions in the VAW Cases and Inconsistencies in the Legislative Framework

Source of Funds: UNDP and UKAID

Implementing Body: School of Law, BRAC University

Duration of the Project: October 2014 to May 2015

Key-words: Violence against women, conviction rate, and inconsistency in legislative framework

Summary of the Report:

This research report seeks to explore two issues, namely: why the rate of conviction in violence against women cases is very low in Bangladesh and whether there are any legislative inconsistencies in the four specific legislations dealing with violence against women namely: the *Dowry Prohibition Act*, 1980,¹⁵³ the *Family Courts Ordinance*, 1985,¹⁵⁴ the *Repression of Violence against Women and Children Act*, 2000¹⁵⁵ (*Violence against Women and Children Act*) and the *Domestic Violence (Prevention and Protection) Act*, 2010 (*Domestic Violence Act*). The report adopts both qualitative and quantitative approaches. For exploring the possible reasons for the low rate of convictions, it conducted interviews with key justice sector players; namely: judges, public prosecutors, defence lawyers, and court officials in Dhaka, Comilla, and Pabna districts.¹⁵⁶ In order to set the context for this report, it surveys the existing literature.

Based on the data covering 2009-2014, the report observes that in less than 1 per cent of violence against women cases, convictions took place and the yearly rate of disposal of pending cases was also quite dismal (ranging from around 19 to around 25 per cent of cases).¹⁵⁷ And as the report has computed the rate of conviction on the basis of data on cases undergoing formal trial (as opposed to all cases reported to authorities), the rate of convictions would be even lower.¹⁵⁸ According to the report, one of the principal reasons for the low rate of conviction is a marked lack of evidence, particularly the lack of adequate

¹⁵³ Act No. XXXV of 1980.

¹⁵⁴ Ordinance No. XVIII of 1985.

¹⁵⁵ Act No. 8 of 2000.

¹⁵⁶ S. M. Atia Naznin and Tanjina Sharmin, *Reasons for the Low Rate of Convictions in the VAW Cases and Inconsistencies in the Legislative Framework* (School of Law, BRAC University, 2015) <<http://dspace.bracu.ac.bd/bitstream/handle/10361/4185/COVER%20PAGE,%20JUNE%207,%202015.pdf?sequence=1>> accessed 9 July 2015, at 18.

¹⁵⁷ Ibid, at 39, 42.

¹⁵⁸ Ibid, at 32.

medical evidence.¹⁵⁹ The unsatisfactory case management by the public prosecutors is another factor contributing to the low rate of conviction, it finds.¹⁶⁰ However, an overwhelming majority of the interviewees dismissed the suggestion made in some existing works that any harshness in the existing laws is a factor for the lower rate of convictions.¹⁶¹

The report notes that a majority of the interviewees have cited the filing of false cases as a reason for the low rate of convictions.¹⁶² Another factor significantly contributing to the low rate of convictions is deficient investigations by the police.¹⁶³ The interviewees opine that although legally, out of court settlement of violence against women cases is not permissible; in practice, for various reasons, it does take place and thus, contributes to the low rate of convictions.¹⁶⁴ The backlog of cases resulting from overburdened courts, non-appearance of witnesses, and poor coordination among various justice sector agencies is also another reason for the low rate of convictions, around half of the interviewees opine.¹⁶⁵

Citing some reported cases decided by the SC, this report points out that in some cases, the SC has set aside convictions on the ground of lack of sufficient corroborating evidence (including medical evidence) in support of the version of the victims.¹⁶⁶ It also notes that in some cases, the conviction orders have been reversed by the SC for reasons such as the trial being conducted on the basis of wrong charges, lack of jurisdiction of the trial court, lack of examination of the victim, and the court taking cognizance of offences in violation of the relevant law etc.¹⁶⁷ It also briefly discusses some cases decided by the trial court in Comilla which show that the lack of evidence, out of court settlement, and the filing of false cases result into acquittals.¹⁶⁸

¹⁵⁹ Ibid, at 44-45.

¹⁶⁰ Ibid, at 46-47.

¹⁶¹ Ibid, at 48-49.

¹⁶² Ibid, at 50.

¹⁶³ Ibid, at 52-53. Apparently, there is some confusion at page 52 of the report, which notes that the question put to the interviewees was “In your opinion, do the police investigate the VAW cases satisfactorily?” and mentions that 16 of the 24 interviewees answered in the affirmative however, the rest of the discussion on this point implies that it is the other way round.

¹⁶⁴ Ibid, at 54-55.

¹⁶⁵ Ibid, at 55-56.

¹⁶⁶ Ibid, at 59-61.

¹⁶⁷ Ibid, at 61-67.

¹⁶⁸ Ibid, at 69-71.

While most of the interviewees opine that any technicalities of existing laws is not a contributing factor to the low rate of convictions; the authors of the report reject this opinion arguing that the observations made in the judgement of the SC setting aside convictions because of the trial taking place under inappropriate provisions indicate otherwise.¹⁶⁹ Sometimes the real motive behind the filing of violence against women cases alleging the demand of dowry is actually an effort to secure maintenance or dower, some interviewees note.¹⁷⁰

The report argues that as dowry is a form of violence against women, it would be better if all dowry related crimes are tried by tribunals dealing with the cases under the *Violence against Women and Children Act*.¹⁷¹ It points out the definitions of child under the *Violence against Women and Children Act* and *Domestic Violence Act* is different and argues that they should be consistent.¹⁷² Similarly, it finds a possibility of confusion in the custody of child cases, as while the Family Courts would deal with this issue, the court dealing with matters under the *Domestic Violence Act* is also vested with the power of granting a temporary order for custody of children.¹⁷³

It recommends that the GOB appoints more experienced lawyers as public prosecutors in violence against women cases.¹⁷⁴ It also recommends that more and more female doctors be appointed in conducting the medical examination of victims.¹⁷⁵ While the report does not indicate how the existing paper based system of record keeping is stymieing the trial process, it nonetheless recommends that a paperless judiciary endowed with modern technology is highly desirable.¹⁷⁶

Comments:

While the overlaps or alleged inconsistencies identified in the report may be tackled by judges through the proper application of their judicial mind; the alarmingly low rate of convictions is very gloomy indeed. It would imply that not only some victims are being denied justice but also many innocent persons are being harassed and valuable resources of the judicial administration are being wasted. Some of the individual findings of the report may be symptomatic of the overall malaise of the administration of criminal justice in

¹⁶⁹ Ibid, at 78-79.

¹⁷⁰ Ibid, at 79.

¹⁷¹ Ibid, at 84.

¹⁷² Ibid, at 87.

¹⁷³ Ibid, at 85-86.

¹⁷⁴ Ibid, at 91.

¹⁷⁵ Ibid, at 92.

¹⁷⁶ Ibid.

Bangladesh and should be subject to more thorough research. For example, if the non-appearance of the witnesses is a factor contributing to delays in trial of violence against women cases; the same may well be pervasive in trials of other criminal offences and needs to be investigated. The report asserts that

[T]he findings of the tribunal visits reveal that most of the cases filed under this Act are false and fabricated. These cases are filed to take revenge out of personal enmity or to satisfy proprietary interest or to get redress for other grievance against the accused.¹⁷⁷

However, one cannot escape that this point made on the basis of some court visits and reference to three reported judgements is somewhat unsubstantiated. It also begs an important question that when can we precisely brand a case as a false case as even a genuine case may fail to secure conviction for a myriad of reasons independent of the truth of the allegation. Hence, the factual accuracy and the reasons for this commonly held assumption (assuming that false cases are indeed pervasive) may be explored more rigorously. The finding of the report that “non-application of judicial mind by the trial court which is exhibited through impropriety, legal infirmity, and lack of sound reasoning in the trial court’s decision, excessive use of jurisdiction by the trial court, framing of wrong charge by the Tribunal and inappropriate procedure of trial” is one of the reasons for low rate of convictions in violence against women cases¹⁷⁸ - is a cause for concern, because these tribunals consist of very experienced judges of the lower judiciary. However, the concern may be somewhat overstated as only a few reported judgements of the SC may not sufficiently represent the quality of the judges of the lower judiciary.

Bibliographic Details:

Naznin, S. M. Atia and Tanjina Sharmin, *Reasons for the Low Rate of Convictions in the VAW Cases and Inconsistencies in the Legislative Framework* (School of Law, BRAC University, 2015)
<<http://dspace.bracu.ac.bd/bitstream/handle/10361/4185/COVER%20PAGE,%20JUNE%207,%202015.pdf?sequence=1>> accessed 9 July 2015

¹⁷⁷ Ibid, at 68.

¹⁷⁸ Ibid, at 59, 61-67.

Title of the Study: Report on a Reference by the Government towards the Possibility of Framing Out of a Uniform Family Code for all Communities of Bangladesh Relating to Marriage, Divorce, Guardianship, Inheritance etc

Source of Funds: Not applicable

Implementing Body: Law Commission of Bangladesh

Duration of the Project: Not available

Key-words: Family law, uniform family code, and law reform

Summary of the Report:

This report by the LCB is essentially an opinion piece on a study conducted by UNESCO and Women for Women on the case for the adoption of a religion-neutral, uniform family code in Bangladesh. Referring to Article 8(1) of the *Constitution of Bangladesh* and the decision of the AD in *Hefzur Rahman v Shamsun Nahar Begum*,¹⁷⁹ interpreting the *Muslim Personal Law (Shariat) Application Act, 1937*,¹⁸⁰ the report argues that in all categories of family affairs of Muslims, only religious laws are applicable and such law can neither be reformed nor be amalgamated with any other set of personal laws.¹⁸¹ It further argues that the Muslim law on marriage, divorce, maintenance, guardianship, dower, and inheritance etc. originating from a divine source is immutable and they are an integral part of the religious beliefs of Muslims.¹⁸² Hence, embracing a uniform family code would mean abandoning the religious scriptures to which Muslims would react very fiercely, it posits.¹⁸³

In a similar vein, it points out that in Hindu religion, the law is considered as a part of *Dharma* (religion) and hence, Hindu law is not amenable to amalgamation with another religious law.¹⁸⁴ It argues that reform of Hindu religious laws in India has taken place, but they have not been applied to Muslims and Christians.¹⁸⁵ Thus, it implies that even when law reform of a particular community has been possible, the scope and application of the reform have been limited to that particular community.

¹⁷⁹ (1999) 51 DLR (AD) 172.

¹⁸⁰ Act No. XXVI of 1937.

¹⁸¹ Law Commission of Bangladesh, *Report on a Reference by the Government towards the Possibility of Framing Out of a Uniform Family Code for All Communities of Bangladesh Relating to Marriage, Divorce, Guardianship, Inheritance etc* (Law Commission's Report No. 69, 18 July 2005) <<http://www.lc.gov.bd/reports/69.pdf>> accessed 8 June 2015, para 1.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid, para 2.

¹⁸⁵ Ibid.

The report notes that Bangladeshi Christians are basically followers of Canon laws which are based on the traditions of their respective Churches.¹⁸⁶ On family matters, the Buddhist people of Bangladesh are governed by Hindu laws.¹⁸⁷ The various indigenous communities also have their own indigenous religious faiths, customs, and culture.¹⁸⁸ The report emphasises on the point of divergence in terms of origin, and base and application of personal laws and suggests that such diversity would mean that the adoption of a uniform family code which would entail substantial law reform of the existing religious law would not be able to go through.¹⁸⁹

Comments:

On a careful reading of the report, a reader would hardly escape the fact that the report is quite assumptive and perfunctory. The report's opinionated and perfunctory nature would be glaring from the following observations made in it that:

[O]ur opinion is that there cannot be any Common Family Code for all the communities in our country as proposed by a few persons only which does not reflect the wish or opinion of all the people of the country.¹⁹⁰

Although there may or not be widespread community support for the introduction of a uniform family code, the branding of the report by the UNESCO and Women for Women as a proposal by 'few persons only' seems to be a rather simplistic exercise. Again, probably there would be hardly any significant law reform which would be withheld simply because it would not reflect the 'wish or opinion' of all Bangladeshis. In modern democracies, the initiation of any significant law reform initiative may stir public debate and may almost never claim to reflect wish or opinion of all people in a country.

It is fairly interesting that the rigid position taken up by the LCB implies that existing religion-centric personal law is virtually immutable, but the report itself has acknowledged that in some cases, legislative intervention (however minor it may be) has taken place.¹⁹¹ Clearly, these two positions are mutually exclusive. Despite these limitations of the report, it probably reiterates an important point. Since a politically non-responsive body, such as the LCB could not or did not want to consider the case for radical law reform or the introduction of a uniform family code, rather advocated for maintaining the status quo; probably, this report serves as an example of the sensitivity of significant law reform in family matters.

¹⁸⁶ Ibid, para 3.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid, paras 5-8.

¹⁹⁰ Ibid, para 8.

¹⁹¹ Ibid, paras 1 and 6.

Bibliographic Details:

Law Commission of Bangladesh, *Report on a Reference by the Government towards the Possibility of Framing Out of a Uniform Family Code for all Communities of Bangladesh Relating to Marriage, Divorce, Guardianship, Inheritance etc* (Law Commission's Report No. 69, 18 July 2005) <<http://www.lc.gov.bd/reports/69.pdf>> accessed 8 June 2015

Title of the Study: The Battle Continues: Aspects of Violence against Women in Bangladesh

Source of Funds: Finnish NGO Foundation for Human Rights KIOS

Implementing Body: Odhikar

Duration of the Project: July 2011 - June 2012

Key-words: Violence against women, gender, and law reform

Summary of the Report:

This report is a study on various forms of violence against women which include rape, dowry related violence, and acid attack in the districts of Munshiganj, Satkhira, Sirajganj, and Tangail.¹⁹² It also relies upon the account of incidents reported in national daily newspapers and monitoring of court proceedings conducted by human rights defenders.¹⁹³ Women in Bangladesh are commonly not treated as equals to men and they face multiple challenges stemming from societal norms expecting them to silently accept maltreatment or blame them for their sufferings, the report posits.¹⁹⁴ It notes that the trial of various violent offences perpetrated on women used to take a very long time for disposal and this often discouraged the victims and their families to persist with their efforts to seek legal remedies. Thus, a need for more expeditious disposal of those cases was felt which prompted the Parliament to enact special laws for trial of offences relating to violence against women.¹⁹⁵

The report contains an overview of the existing statutory laws on violence against women. It notes that Section 13 of the *Suppression of Violence against Women and Children Act*, 2000 (Act No. 8 of 2000) providing that a rapist may be forced to provide for the maintenance of the child born out of the rape; though a unique provision, there is no reported case where this has actually occurred.¹⁹⁶ Furthermore, it claims that any effort to force a rapist to do this may expose the victim and child to further violence.¹⁹⁷ The report mentions

¹⁹² Odhikar, *The Battle Continues: Aspects of Violence against Women in Bangladesh* (2012) <<http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2012/12/publication-violence-against-women-2012-part1-eng.pdf>> accessed 25 November 2014, at 11. The report claims that the choice of the districts is prompted by inter alia prevalence of high level of dowry related violence perpetrated in Tangail and Munshiganj districts and high level of acid attacks in Satkhira and Sirajganj districts, but it does not provide any source of these pieces of factual information.

¹⁹³ Ibid, at 25.

¹⁹⁴ Ibid, at 7-11.

¹⁹⁵ Ibid, at 15.

¹⁹⁶ Ibid, at 16-17.

¹⁹⁷ Ibid, at 17.

that the *Acid Crime Control Act*, 2002 (Act No. 2 of 2002) providing for different punishment for acid attack on different organs seems unjustified and punishment should rather be based on the medical review on the gravity of the harm caused by the attack.¹⁹⁸ The report implies that disparate punishments for the same offence provided under different laws may cause confusion and is not conducive to justice.¹⁹⁹

The report finds that woman human right defenders face violence, intimidation, and other challenges in discharging their professional responsibilities.²⁰⁰ For redressing their problems, it recommends that they be protected, as required under the *Declaration on Human Rights Defenders*, 1998 and are provided with informal training on security and psychological training to cope with their work related stresses.²⁰¹ The report argues that Bangladesh's reservations to the CEDAW are impressible as they contradict the core objective of CEDAW.²⁰²

The report points out that the GOB's professed claim of deference to the Muslim *shariah* law is unacceptable for two reasons. Firstly, because there are Muslim majority countries which have acceded to the CEDAW without reservations and secondly, Bangladesh has already enacted laws which do not, in a strict sense, comply with the *Shariah*.²⁰³ The report notes that courts in Bangladesh are generally not prepared to accept pleadings based on international law and would not accept international legal norms as binding laws unless they are explicitly incorporated in the national law,²⁰⁴ possibly implying that even ratified international legal instruments are of limited practical value unless they are incorporated in the national law. Part 2 of this study contains findings of the fact-finding reports on some incidents of the different forms of violence against women.

Comments:

The report's call for the GOB to dispense with its reservation on certain provisions of the CEDAW is something which is long overdue and should be seriously considered by the policy makers. To what extent, the tribunals set up for ensuring speedy trial of violent crimes has succeeded in fulfilling the expectations of speedy and effective trials may be examined. The report's observation that already there are excellent apparatus for protecting women from violence but they often fail because of ingrained societal norms which are prejudicial to the

¹⁹⁸ Ibid, at 20.

¹⁹⁹ Ibid, at 21.

²⁰⁰ Ibid, at 40-45.

²⁰¹ Ibid, at 46-47.

²⁰² Ibid, at 50-51.

²⁰³ Ibid, at 51-52.

²⁰⁴ Ibid, at 56.

equal status of women - would mean that violence against women is a very complex issue, where the use of criminal sanctions alone may not be able to engender any meaningful outcome. In other words, when social norms may discourage any effort to seek recourse to law, there must be efforts to sensitise society at large to change their attitude towards women. The observation of the report that district level committees set up for the protection of women from violence are disinclined to serve the needs of women and the response of the members of these committees that their capabilities are strained by lack of adequate manpower and budget,²⁰⁵ is disappointing but may not be surprising as while the GOB's zeal for this type of bodies is quite common, the lack for proper and adequate infrastructure and funding for their optimal performance is also quite common.

Bibliographic Details:

Odhikar, *The Battle Continues: Aspects of Violence Against Women in Bangladesh* (2012)
<<http://odhikar.org/the-battle-continues-aspects-of-violence-against-women-in-bangladesh/>>
accessed 25 November 2014

²⁰⁵ Ibid, at 55.

Title of the Study: Widow's Plight in Bangladesh: Rethinking Policies

Source of Funds: The Royal Norwegian Embassy in Bangladesh, NOVIB, and Swedish International Development Cooperation Agency

Implementing Body: Bangladesh National Women Lawyers' Association

Duration of the Project: Not available

Key-words: Widow, gender discrimination, and law reform

Summary of the Report:

This study analyses the problems that widows in Bangladesh confront. It finds that more often than not widows are socially neglected and struggle physically, psychologically, and economically. The study presents a sketchy snapshot of the status of women in other South Asian countries (all member states of the South Asian Association for Regional Cooperation except the Maldives). The plurality of legal systems that is the recognition of religion based laws as well as civil laws, sometimes creates issues for widows, the study notes. The reason is sometimes the existence of a legally recognised marriage upon which all the subsequent rights to property of the deceased husband and other entitlements would hinge on, can be a very difficult proposition because of the lack of community's acceptance of the marriage itself.

It mentions that even when religion-based family laws have been reformed through legislative interventions, widow's predicaments have been ignored. For instance, it mentions that the *Muslim Family Laws Ordinance*, 1961²⁰⁶ has made sure that the issues of a deceased Muslim father would inherit the grandfather's property even if their father dies before the grandfather. However, the legislative reform ignored the case of inheritance of the deceased's wife to the property which she could have inherited from her husband. The study finds that among the widows of the followers of 3 major religions in Bangladesh, Christians enjoy better legal rights compared to their Muslim and Hindu counterparts.

The study contains the findings of the questionnaire based surveys of 300 widows of diverse religious, educational, age, and income groups in the selected areas of Dhaka, Gazipur, and Narail districts. For obtaining more detailed insight, it also conducted focal group discussions with some selected respondents. It notes that most of the respondents have received education up to primary level and also come of the economically backward section of the community which it finds is natural as people in such disadvantaged section of the community may suffer from malnourishment leading to premature death. On the basis of the responses elicited from the widows, it presents their problems in four principal heads; namely problems within family, from society, by in-laws, and at workplaces. The respondents mention that even when they may be willing to remarry; concern about minor children's welfare, family pressure, demand of dowry (though exchange of dowry is a criminal offence)

²⁰⁶ Ordinance No. VIII of 1961.

etc. prevents them from doing so. The study notes that most women are not even able to enjoy their legally sanctioned right to inherited property due to social norms and practices expecting them to forego their rights. It also presents some detailed case studies of the various problems faced by the respondents of the survey.

The study argues that widowhood is sometimes a natural consequence of child marriage in defiance of laws, and hence, sees stringent application of the *Child Marriage Restraint Act, 1929* as a way to reduce the numbers of widows. It also notes that women are often forced to marry men significantly older than them, which also naturally contributes to widowhood. It observes that sufferings of widows have received little attention in both governmental and NGO circles. It notes that even the limited social security benefits that some widows receive as part of governmental projects are sometimes tainted by corrupt practices such as the diversion of funds to those who are not widows or do not qualify under the rules.²⁰⁷ For improving the conditions of widows, the report emphasises on the need for expanding the scope for their income generation which may be achieved through donation, credit, or trade training.

The study argues that there is a case for setting up of a Widow Welfare Trust Fund on the basis of funds contributed by the government, NGOs, and civil society organisations. It wants to see that the existing legal rule of limited property rights of Hindu women is dispensed with. With regard to Muslim law, it suggests that a legal mechanism of joint ownership of any land inherited by either of the spouses can be devised. As the effect of widowhood in this country can be quite traumatic, the report demands that psychological counselling free of cost, be introduced for widows.

Comments:

As almost a decade and a half have passed since the study, its findings may or may not be reflective of the status of widows. In particular, it is more or less common knowledge that women's participation in the workforce in Bangladesh has significantly increased over the years. That is why while the discriminatory personal law-based issues faced by them may not have changed, their economic vulnerability may have decreased somewhat. Similarly, while the social security benefits in Bangladesh is still not extensive, the social safety programmes implemented by the Government have gradually expanded. Again with the growing life expectancy and somewhat reduced rate of child marriage, the rate of widowhood may have decreased. Hence, the state's ability to undertake programmes for addressing economic insecurity of widows may have somewhat expanded. For all these reasons, there may be scope for conducting further research on the impact of the social safety net programmes in ameliorating the plight of widows.

²⁰⁷ Bangladesh National Women Lawyers' Association, *Widow's Plight in Bangladesh: Rethinking Policies* (2002) at 93.

Bibliographic Details:

Bangladesh National Women Lawyers' Association, *Widow's Plight in Bangladesh: Rethinking Policies* (2002)

Title of the Study: “Will I Get My Dues ... Before I Die?”: Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce

Source of Funds: Ford Foundation

Implementing Body: Women’s Rights Division, Human Rights Watch

Duration of the Project: March 2011 - June 2012

Key-words: Women Rights, divorce, separation, maintenance, and law reform

Summary of the Report:

This report analyses the personal laws on marriage, divorce, and separation of Muslim, Hindu, and Christian religion and how they discriminate against women. It is based on the analysis of relevant laws, secondary sources and interview with 255 people.²⁰⁸ Chapter I of the report chronicles how in general women in Bangladesh are economically deprived and how the economic contributions made by women through their household work remains virtually unrecognised. Chapter II of the report provides a detailed account of the existing laws on marriage, divorce, and separation with particular emphasis on their discriminatory effects on women.

The report finds that since its independence in 1971, the legal reforms in Bangladesh have made a noticeable headway in the sphere of violence against women; but the religion based personal laws have not undergone any major reform.²⁰⁹ It finds that the discriminatory laws propagate women’s economic dependence on men and they are a significant factor behind the relatively higher poverty rate of families headed by women and impacts adversely on their housing, food, and education of their children.²¹⁰ According to the report, because of its ease of access and acceptance by the community, *shalish*, an informal community based dispute resolution mechanism, is the first step that women in Bangladesh typically take for resolving their matrimonial disputes.²¹¹ However, this procedure is heavily dominated by males and the decisions reached through it, may often be in defiance to codified laws protecting women’s rights or compel women to accept unfair demands.²¹²

When they approach the formal judicial mechanism through the family courts, they face considerable procedural tardiness and also are harassed by frivolous claims of restitution

²⁰⁸ Human Rights Watch, “Will I Get My Dues ... Before I Die?”: Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce (2012) <<http://www.hrw.org/sites/default/files/reports/bangladesh0912ForUpload.pdf>> accessed 7 May 2015, at 2.

²⁰⁹ Ibid, at 47.

²¹⁰ Ibid, at 51-54.

²¹¹ Ibid, at 60.

²¹² Ibid, at 60-62.

of conjugal rights or allegations of theft of family property.²¹³ In determining the amount of money payable by the husband as maintenance, the ability of the husband and the needs of the wife are taken into account by family courts, but there are no known criteria for assessing this ‘ability’ or ‘need’.²¹⁴ According to the report, although in Muslim or Christian Law there is no specific reference to the requirement of wife being ‘chaste’, as a pre-condition for her entitlement to maintenance, in practice it is considered to be an important factor in the disposal of cases on maintenance.²¹⁵ Furthermore, a pre-condition for maintenance is the existence of a valid marriage which can often be difficult because of lack of registration of marriages.²¹⁶

The report notes that after obtaining a decree for maintenance, when a wife files an execution suit, the court habitually asks for evidence of the husband owning property or having salaried income which is difficult for a wife, particularly when their relationship has crumbled.²¹⁷ The state’s support to divorced and separated women has somewhat expanded in their scope in Bangladesh, but many women in need of support are still not covered by these programmes which may be attributable to the lack of awareness about the programmes, bureaucratic operational mode, or misappropriation of funds, it finds.²¹⁸ Destitute, homeless women can be prosecuted for vagrancy, which the report rightly points out is in effect a punishment for being impoverished.²¹⁹

The report wants that Bangladesh would progressively implement a secular civil code on family laws for all Bangladeshis and in the short term, work on reducing the discriminatory aspects of personal laws.²²⁰ It recommends that the GOB enact a law allowing inter-faith marriages without the couple renouncing their respective religious affiliation.²²¹ Irrespective of people’s religion, all in Bangladesh should be subject to the obligation of compulsory registration of marriage and records kept in the register should be digitally accessible for serving evidentiary purposes, it opines.²²² The report calls upon the GOB to recognise the concept of marital property and allow it to be divided between the spouses at

²¹³ Ibid, at 60, 63-65, 70-71, 77-79.

²¹⁴ Ibid, at 67.

²¹⁵ Ibid, at 70.

²¹⁶ Ibid, at 74-75.

²¹⁷ Ibid, at 76.

²¹⁸ Ibid, at 80, 84.

²¹⁹ Ibid, at 81.

²²⁰ Ibid, 98.

²²¹ Ibid, at 98.

²²² Ibid.

the time of divorce.²²³ It wants that fixed criteria be set for the family court judges in awarding maintenance and restitution of conjugal rights be abolished.²²⁴ The report recommends that men and women should enjoy equal right to divorce.²²⁵ It wants that the *Vagrants and Shelterless Persons (Rehabilitation) Act, 2011* (Act No. 15 of 2011) be repealed or amended so that destitute people (which may include divorced or separated women) without shelter cannot be subject to indiscriminate arrest and detention.²²⁶

The report calls upon the GOB to appoint more judges in family courts or to reduce their caseload in other civil matters so that they can spend more time in settling family court cases.²²⁷ It wants that the GOB would direct family court judges to provide interim maintenance pending final disposal of a suit.²²⁸ The report urges that the Planning Commission of Bangladesh include information on the female-headed families in its official reports.²²⁹ The report suggests that international donors should work on inclusion of female-headed families in social security programmes and family courts be linked with the provision on information on these programmes.²³⁰

Comments:

The finding on the delay in family courts may not be unique or any different from other courts in Bangladesh and the reform on service of summons and other procedural issues hampering the speedy disposal of civil suits are longstanding issues in need of urgent consideration by policy makers. The report's claim that the lack of legal reform in personal laws is not attributable to broad social acceptance of the status quo²³¹ may or may not factually hold. While as the report points out that many NGOs, human rights activists and liberal individuals have manifested their earnest demand for secular civil laws on personal matters or at least substantial reforms on personal laws of various religions, the lack of reform would imply that there are some formidable forces against such reforms. Hence, possibly any significant effort on law reform should factor in that force and mull on how to tackle them. Acknowledgement of marital property can be a very important step in

²²³ Ibid.

²²⁴ Ibid, at 98-99.

²²⁵ Ibid, at 99.

²²⁶ Ibid.

²²⁷ Ibid, at 100.

²²⁸ Ibid.

²²⁹ Ibid, 102.

²³⁰ Ibid.

²³¹ Ibid, at 47.

recognising the non-monetary contributions made by women and their equitable distribution, in turn be an important buffer for protecting them from destitution if they get divorced.

Bibliographic Details:

Human Rights Watch, *“Will I Get My Dues ... Before I Die?”: Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce* (2012) <<http://www.hrw.org/sites/default/files/reports/bangladesh0912ForUpload.pdf>> accessed 7 May 2015

HUMAN TRAFFICKING

Title of the Study: Human Trafficking in Bangladesh: Analysis, Challenges & Recommendations

Source of Funds: Not available

Implementing Body: Bangladesh National Women Lawyers' Association

Duration of the Project: Not available

Key-words: Human trafficking, exploitation of labour, and poverty

Summary of the Report:

This study analyses the various factors contributing to human trafficking in Bangladesh, legal and administrative measures taken by the government to reduce this, and it makes some recommendations to tackle this grave problem. It notes that while usually only women and children from Bangladesh were being trafficked, in recent years many men are also being trafficked with the evil design of exploiting their labour. It identifies acute poverty, illiteracy, unemployment, and lack of an efficient criminal justice system etc. as the factors propping up the number of human trafficking cases in Bangladesh.

The report notes that Bangladesh has enacted a statute entitled the *Human Trafficking Deterrence and Suppression Act, 2012*²³² and there are other laws and policies for preventing and punishing human trafficking. Bangladesh has also ratified major international legal instruments for the prevention and prosecution of human trafficking. The report hails the *Human Trafficking Deterrence and Suppression Act, 2012* on many counts. For example, the report notes that it is the first statute in Bangladesh that has recognised not just children and women but also men as the victims of human trafficking. More importantly, this law has perceived the victims of trafficking not as offenders but as victims and provided for compensatory and rehabilitating measures. However, the report alleges that due to the lack of awareness of police and courts, often trafficking cases are not being filed under this recent legislation. And citing the example of a reported case,²³³ the report notes that filing cases under an improper law may prove to be fatal for the prosecution case.

The study claims that although victims have legal rights to shelter, in practice they are often denied of this right and are sent back to their families which in turn make them susceptible to pressure by the traffickers and ultimately compel them to withdraw the case. The report argues that many victims are quite uninformed of their right to compensation which too may have been a factor inducing them to withdraw their cases. The report mentions

²³² Act No. 3 of 2012.

²³³ *State v Anjali Debi Alias Monju Debi* (2009) 61 DLR (HCD) 738.

that in many cases, the victims of human trafficking are pushed back to Bangladesh by law enforcing agencies of the country to which they have been trafficked under precarious circumstances with no regard to the safety of the victims. This involuntary and reckless push back may paradoxically leave the victims without any valid travel documents which lead them to be identified as illegal entrants to Bangladesh. In some cases, owing to concerns stemming from the social stigma, the victims are not even accepted by their own families.

The report cites the incident of a trafficked girl who committed suicide in India as an example of the denial of due legal protections that victims of trafficking are entitled to under international legal instruments. The report observes that the rate of arrests and convictions of the accused in the trafficking cases are quite low. The report argues that under the existing laws of Bangladesh, if a person has provided her/his testimony through affidavit or other means, for the testimony to be legally admissible, the individual must also provide physical testimony during the trial before the court. Thus, the report raises the concern that in cases of cross-border trafficking, the evidence of some relevant persons living abroad may not be admissible which may lower the chance of convictions. However, as Section 30 of the *Human Trafficking Deterrence and Suppression Act, 2012* provides that subject to the satisfaction of the tribunal, any evidence recorded through audio-visual or electronic means would be admissible; it appears that this concern may be overstated.

The report provides a detailed account of the measures that are envisaged to be taken by the *National Policy for Providing Appropriate and Comprehensive Services to Victims of Human Trafficking*. The report acknowledges that since human trafficking is more often than not driven by some deep-seated push factors, the legal battle against human trafficking can at best have a partial success. The report concludes with somewhat broad recommendations mainly covering various aspects of reliefs to be granted to the victims of human trafficking and punishments to be meted out to human traffickers.

Comments:

The law provides that offences under the *Human Trafficking Deterrence and Suppression Act, 2012* are non-compoundable. Therefore, it is not clear how cases of human trafficking can be withdrawn by the victims and the report does not provide any thorough explanation. It may be surmised that perhaps the victims simply do not co-operate with the prosecution and thus pave the way for the accused to go scot-free. Even if that is the case, this would imply a failure of the law enforcing agencies and the prosecution to provide adequate security and support to the victims and how this serious problem can be controlled, should be studied.

As human trafficking is often a cross-border phenomenon, in order to tackle it, the forces driving trafficking to the various destinations and the measures that public officials in those countries can take for curbing trafficking and protection of the trafficked victims would also have to be looked at. Furthermore, the report itself has acknowledged that there is lack of research on important issues such as the modes of inducement of victims by traffickers and the hierarchical structure of the human trafficking operations. Further research on these issues

may guide the law enforcing agencies to better use their resources for thwarting the operation of human traffickers. The example of the trafficked girl committing suicide in India would imply that the operation of the *SAARC Convention* and its implementation by member countries of the *SAARC Convention on Preventing and Combating of Trafficking in Women and Children for Prostitution*, 2002 may also be the subject matter of research.

Bibliographic Details:

Bangladesh National Women Lawyers' Association, *Human Trafficking in Bangladesh: Analysis, Challenges & Recommendations* (2013)

Title of the Study: Trafficking of Women and Children in Bangladesh: An Overview

Source of Funds: USAID

Implementing Body: ICDDR,B

Duration of the Project:

Key-words: Women, children, trafficking, and regional response to trafficking

Summary of the Report:

This report reviews the extent of trafficking in women and children in Bangladesh, the factors contributing to this serious crime, various forms that it takes, routes commonly used by traffickers, and activities of GOB and local NGOs in this regard. It relies upon secondary sources such as journal articles, reports, booklets, newspaper reports and also interviews of some NGO activists, researchers, rescued women and children, and a convicted trafficker. According to the report, the existence of chronic poverty, large population, recurrent natural disasters, massive migration from rural to urban areas make South Asia as a whole the most exposed region for human trafficking.²³⁴ The report points out that the trafficking of women and children is driven by a combination of push factors (existing factors in the sending country or community such as limited employment opportunity, low social status of women, natural disasters, lack of social safety, lack of shelter for women in distress, urbanisation, migration, non-registration of female domestic help etc.) and pull factors (existing factors in the receiving country or community such as bonded labour, labour migration, prostitution, and cultural myths etc.).²³⁵

The report mentions 18 transit points across Bangladesh-India and Bangladesh-Myanmar border which traffickers generally use for trafficking women and children from Bangladesh.²³⁶ It however notes that traffickers use different routes at different times to avoid detection by members of the law enforcing agencies.²³⁷ Referring to a research conducted by BNWLA, the report argues that as the enclaves lying between India-Bangladesh are not routinely patrolled either by the law enforcing agencies of Bangladesh or India, these enclaves are used by traffickers for sourcing their victims.²³⁸ The report notes that due to lack of effective monitoring, reliable data on the magnitude of trafficking from Bangladesh is virtually absent. According to the report, around 13,220 children were trafficked in the five

²³⁴ Rukhsana Gazi et. al., *Trafficking of Women and Children in Bangladesh: An Overview* (ICDDR,B Special Publication No 111, 2001) <http://www.icddr.org/publications/doc_download/669-trafficking-of-women-and-children-in-bangladesh-an-overview-sp111-2001> accessed 4 February 2015, at 10.

²³⁵ Ibid. at 20-22.

²³⁶ Ibid, at 33

²³⁷ Ibid.

²³⁸ Ibid. at 11

years preceding its publication and at the time of its publication, about half a million trafficked Bangladeshi children were engaged in prostitution in brothels of India and Pakistan.²³⁹ As not all children and women victims would end up in prostitution, it is highly probable that the number of victims of trafficking would be considerably more.

The report reveals that while trafficked women and children are direct victims of this heinous offence, as this deprives them of the opportunity to acquire education and grow according to their potential, the state also suffers as it is deprived of human resources necessary for achieving economic development.²⁴⁰ The report mentions that some national NGOs work collaboratively to combat trafficking in women and children but it finds that these NGOs often confront harassment in rescuing victims from the police custody.²⁴¹ They also have to face resistance from pimps and godfathers who are the perpetrators of human trafficking.²⁴² The report mentions that NGOs lack space and facilities in their rehabilitation centre for victims of trafficking.²⁴³ While newspaper reports often narrate the events of rescue of victims of trafficking, there is little following up on what happens to those rescued victims after that, it notes.²⁴⁴

According to the report, there are several legal provisions in Bangladesh to punish perpetrators of human trafficking but these laws are not effectively implemented.²⁴⁵ The report suggests that the victims of trafficking need to be supported by the Government for bringing their case to courts, and the legal professionals and judges need to be trained up;²⁴⁶ but it does not give any detail as to the scope of such training. It claims that many research reports on human trafficking are prepared on the basis of anecdotal evidence from secondary sources and unreliable data.²⁴⁷ It notes that the activities on prevention of trafficking are mainly concerned with awareness raising campaigns. It suggests that grassroots level community mobilisation in high trafficking-prone localities involving law students to impart paralegal training may be effective.²⁴⁸ Due to the regional nature of the offence, the report argues that country reports from each member state of the SAARC may be very helpful for

²³⁹ Ibid, at 18.

²⁴⁰ Ibid, at 39.

²⁴¹ Ibid, at 44.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid, at 48.

²⁴⁵ Ibid, at 46, 56.

²⁴⁶ Ibid, at 47.

²⁴⁷ Ibid, at 56.

²⁴⁸ Ibid, at 57.

gathering a comprehensive picture of the problem.²⁴⁹ In particular, a uniform plan of action which would involve both governments and NGOs within the region can be helpful for successfully arresting, extraditing, and convicting traffickers, it observes.²⁵⁰

Comments:

Because of the elapse of significant time since the publication of the report, some aspects of its findings may be outdated. In particular, the recently discernible very alarming phenomenon of trafficking of men through the Bay of Bengal is naturally not covered by it. Similarly, the report mentions that at the time of its preparation, women migration for employment was not officially recognised in Bangladesh which is no longer the case and it would be interesting to see if this has made any impact on trafficking of women.

The report's subjective finding that the civil society in Bangladesh is not sanitised enough about the evil effects of trafficking and do not take it as seriously as it takes patently violent offences such as murder, rape, or mugging is open to question. This finding is important as according to the authors of the report, without recognition of trafficking as a human rights and social problem, combined resistance against trafficking is not possible. Concerted action would, of course, be helpful but whether any perception problem of the civil society is a barrier to such action remains untested. It is also noticeable that while the report has identified that pull factors in the destination country of the victims contribute to trafficking; the report virtually contains no analysis on what can be done to mitigate those factors.

Bibliographic Details:

Gazi, Rukhsana et. al., *Trafficking of Women and Children in Bangladesh: An Overview* (ICDDR,B Special Publication No 111, 2001)
<http://www.icddrb.org/publications/doc_download/669-trafficking-of-women-and-children-in-bangladesh-an-overview-sp111-2001> accessed 4 February 2015

²⁴⁹ Ibid.

²⁵⁰ Ibid, at 58.

INDIGENOUS COMMUNITIES

Title of the Study: Implementation of the Chittagong Hill Tracts Peace Accord: Challenges and Human Rights Issues

Source of Funds: UNDP

Implementing Body: National Human Rights Commission

Duration of the Project: Not available

Key-words: Chittagong Hill Tracts, Peace Accord, and indigenous people

Summary of the Report:

This study report seeks to evaluate the human rights situation of the indigenous people and identify the challenges to the implementation of the *Chittagong Hill Tracts Peace Accord* of 1997 signed between the GOB and Parbattya Chhattagram Jana Sanghati Committee for a peaceful resolution of the violent ethnic conflict in the Chittagong Hill Tracts region. At the outset, the report argues that as the Peace Accord contains certain provisions for ensuring preferential treatment of the indigenous population of the region, its implementation can eradicate the historical pattern of discrimination of this group of people.²⁵¹ The report analyses the definition of indigenous people and their rights under international law and concludes that the tribal people of the Chittagong Hill Tracts and also of the flat lands of Bangladesh, legally qualify to be recognised as indigenous people.

The report notes that the Peace Accord does not deal with the issue of recognition of these people as indigenous and according to the Chairperson of the Chittagong Hill Tracts Regional Council (CHTRC), the realisation of the rights of these people is much more imperative than a legalistic or symbolic recognition of indigenous people in the Constitution.²⁵² Nevertheless, according to the author of the report, a constitutional recognition of indigenous people can assist the development of their culture and taming a sort of colonising attitude of the dominant cultures.²⁵³ The report mentions that the Peace Accord has envisioned that the GOB would take measures to preserve the characteristics of tribal culture of the region and finds that by enacting laws such as the *Chittagong Hill Tracts*

²⁵¹ Dr. Abdullah Al Faruque, *Implementation of the Chittagong Hill Tracts Peace Accord: Challenges and Human Rights Issues* (National Human Rights Commission, 2014) <<http://www.nhrc.org.bd/PDF/Study%20reports/Implementation%20of%20the%20Chittagong%20Hill%20Final%2000003.pdf>> accessed 15 January 2015, at 13.

²⁵² Ibid, at 36.

²⁵³ Ibid, at 33.

Regional Council Act, 1998 the *Chittagong Hill Tracts Land Disputes Resolution Act, 2001* and by retention of the role of the traditional chiefs and headmen in the administration of the region, the GOB may have partially fulfilled its obligations.²⁵⁴ At the same time, settlement of Bengalis, illegal land grabbing, employment of Bengalis in regional administrative bodies etc. have continued unabated and these are corroding the special character of the region, it notes.²⁵⁵ In a similar vein, it finds that no change has been brought about in some laws such as the *Chittagong Hill Tracts Manuals of Regulation, 1900*, *Chittagong Hill Tracts Board Development Ordinance, 1976*, and *Forest Act, 1927* etc. for making them amenable to the Peace Accord.²⁵⁶

The report observes that in order to monitor implementation of the Peace Accord, an implementation committee is in existence but it has not been really effectual.²⁵⁷ It argues that this committee, consisting of members of the parties to the Peace Accord, lacks the involvement of a neutral third party who could play the role of an arbitrator or mediator.²⁵⁸ According to the report, NHRC and members of the civil society should be involved in this process.²⁵⁹ It observes that as no election for the Chittagong Hill District Councils (CTHDCs) has taken place; the current members of the interim councils are not accountable to anyone.²⁶⁰ It also finds that in case of the appointment of officers in the Hill District administration and in lower ranked positions of the police force, and land development tax collection, the CTHDCs are being ignored in violation of the provisions of the Peace Accord.²⁶¹ The report points out that the Peace Accord is silent on rehabilitation and re-settlement of Bengali settlers in the region and considering the enormous complexity of the issue; it suggests that a broader consensus among the stakeholders would be needed for accomplishing this.²⁶²

The report notes that in violation of the Peace Accord, the Deputy Commissioners acquire land in the region for leasing them for commercial and industrial purposes, setting up satellite villages, army camps, and training centres etc.²⁶³ According to the report, only 12 out of the 33 areas of governance envisioned under the Peace Accord have been transferred to the

²⁵⁴ Ibid, at 37-38.

²⁵⁵ Ibid, at 37.

²⁵⁶ Ibid, at 38.

²⁵⁷ Ibid.

²⁵⁸ Ibid, at 39.

²⁵⁹ Ibid.

²⁶⁰ Ibid, at 39-40.

²⁶¹ Ibid, at 40-41.

²⁶² Ibid, at 74.

²⁶³ Ibid, at 43-44.

control of the CTHDCs.²⁶⁴ It also alleges that although under the Peace Accord, in making laws having bearing on the CHT region, the GOB is required to consult the CHTRC; it often does not do that.²⁶⁵ The report notes that due to strong protest of the indigenous people (chiefly stemming from a fear that illegal occupiers of land could be recorded as possessors and may ultimately gain full legal title), the Land Dispute Settlement Resolution Commission had to abandon its effort to conduct a cadastral survey.²⁶⁶ In order to address on-going problems with indigenous land rights, the author opines that the 13-point amendment proposals prepared by the Ministry of Chittagong Hill Tracts Affairs in consultation with the CHTRC; needs to be executed and the practice of leasing out indigenous land to people not resident in the region needs to be ceased.²⁶⁷

The report notes that while some temporary military camps have been taken down, the region remains deeply militarised and sometimes camps by para-military forces have taken over the place of vacated military camps.²⁶⁸ It also observes that sometimes, the armed forces intervene in civil matters in the name of implementing development projects which is not congenial for diffusing tension.²⁶⁹ It notes that many indigenous people, who fled from their land, have not been able to recover their lost land occupied by settlers. The report argues that more needs to be done for ensuring preferential treatment of indigenous people in admission to institutes of higher education and employment in government, semi-government, council offices, and autonomous institutions.²⁷⁰ It notes that in 2010, upon a writ petition, the HCD has declared some of the provisions of the laws relating to the region unconstitutional essentially on the ground that they are inconsistent with the unitary character of the state and notes that an appeal by the GOB against the decision is currently pending.²⁷¹ The report implies that on this point, it does not agree with the HCD and also opines that assailed provisions of the laws are necessary for protecting the legitimate interests of the indigenous people of the region.²⁷²

The report recommends that the practice of vesting important functions in the Deputy

²⁶⁴ Ibid, at 45.

²⁶⁵ Ibid, at 49-50.

²⁶⁶ Ibid, at 51-52.

²⁶⁷ Ibid, at 76-77.

²⁶⁸ Ibid, at 56.

²⁶⁹ Ibid.

²⁷⁰ Ibid, at 57-58.

²⁷¹ Ibid, at 60.

²⁷² Ibid, at 61-62.

Commissioners should cease.²⁷³ It wants elections to take place for the CTHDCs and CHTRC.²⁷⁴ The development plans for the region must occur in discussion with the CTHDCs and CHTRC, the report recommends.²⁷⁵ It states that for easing tension in the region, a progressive withdrawal of the temporary military camps is required.²⁷⁶ It also suggests that the responsibilities for all civilian functions such as operating development projects should be vested in the hands of the civilian administration.²⁷⁷ According to the report, Bangladesh should ratify the *Indigenous and Tribal Peoples Convention*, 1989 (Convention No. 169) and other relevant international legal instruments in this area.²⁷⁸ It wants the NHRC to investigate all allegations of violation of human rights in the region and publicly report on them with appropriate recommendations.²⁷⁹

Comments:

The report's holistic approach towards the myriad and complex issues relating to the Peace Accord is admirable. A few of the recommendations can be debatable, for example, the merits of the involvement of the NHRC or members of the civil society in the Implementation Committee are uncertain and the report's finding may not be the last word in this area. At least, from an operational viewpoint, it may be somewhat challenging. Nonetheless, the recommendations of the report are well considered and overall, it can be said that without the full implementation of the Peace Accord, lasting peace in the region cannot be attained. If the recommendations made in the report are implemented by the GOB, there should be a new dawn in ensuring communal peace and harmony in the Hill Tracts region.

Bibliographic Details:

Faruque, Dr. Abdullah Al, *Implementation of the Chittagong Hill Tracts Peace Accord: Challenges and Human Rights Issues* (National Human Rights Commission, 2014) <<http://www.nhrc.org.bd/PDF/Study%20reports/Implementation%20of%20the%20Chittagong%20Hill%20Final%2000003.pdf>> accessed 15 January 2015

²⁷³ Ibid, at 75.

²⁷⁴ Ibid. at 77.

²⁷⁵ Ibid, at 75.

²⁷⁶ Ibid, at 76.

²⁷⁷ Ibid.

²⁷⁸ Ibid, at 78.

²⁷⁹ Ibid.

Title of the Study: *Parbotto Chotrogramer Bhumi Somosya O Paharider Odhikar* (Land Problems and Rights of Hilly People in Chittagong Hill Tracts)

Source of Funds: Not available

Implementing Body: ALRD

Duration of the Project: Not available

Key-words: Chittagong Hill Tracts, land rights, and Chittagong Hill Tracts Peace Accord

Summary of the Report:

This study seeks to identify the underlying factors contributing to gradual landlessness of indigenous people in the Chittagong Hill Tracts (CHT) region and the possible roles to be played by a Land Dispute Resolution Commission in addressing the land rights related problems faced by the indigenous people in the region. It is based on a survey of relevant literature, land related records available in office of the Deputy Collectors and courts, and interview of those indigenous people who have been dispossessed of their land, headman, and local leaders. The study mentions that due to fears of harassment, many indigenous people as well as public servants did not cooperate with the research team and that hampered their data collection and research. The study presents a historical chronology of the land issues in the CHT region beginning from pre-British colonial rule era. The report notes that since the days of British colonial rule, indigenous people owned land on the basis of possession and used to pay rent to Headman but generally did not care for following any formal process of registration of land.

The study notes that in the later part of the 1970s, the GOB started settling non-indigenous people from the rest of the country to the lands owned by the indigenous population of CHT. Such settlement took place without compliance with the legal rules which required an investigation by land survey officials and a recommendation by Headman. Often acquisition of land for setting up military camps or camps for law enforcing agencies has also dispossessed indigenous people in the CHT. Although such camps have been shifted from one place to another; instead of returning the land to its indigenous owners, often it has been settled in favour of Bengali settlers. Those who took refuge in India to escape the turbulent situation in the CHT region that was prevalent from 1978 until the Peace Accord of 1997, after coming back, often could not recover their land.

The report observes that over the last century, the number of indigenous population in the CHT region has drastically decreased in proportion to the number of Bengali population.²⁸⁰ It also observes that the proportion of land in the region is much less than other parts of Bangladesh.²⁸¹ The report narrates the allegations of the indigenous interviewees that

²⁸⁰ Shamsul Huda (ed.) *Parbotto Chotrogramer Bhumi Somosya O Paharider Odhikar* (Land Problems and Rights of People in Chittagong Hill Tracts) (ALRD, 2010), at 17.

²⁸¹ Ibid.

Bengali settlers with direct or implicit support of the law enforcing agencies and administration occupied their cultivable and non-cultivable lands. As many pieces of land owned by the indigenous population of the region lack any registration papers, the GOB perceives them as *khas land* (land owned by the government) and they are leased to Bengali industrialists for rubber plantation or industrial operations.

The report notes that as per the provision of the CHT Peace Accord, 1997, a Land Commission was set up in 2001 but observes that as the Commission was set up without any consultation with the CHT Regional Council, it has been vehemently opposed by the indigenous population and has not been operational. The authors of the report scrutinised the papers used in allotting or leasing land to Bengali settlers in the CHT region and finds that many of the legal provisions have not been complied with in the allotment or lease process. It finds that in many cases, there are multiple *kabuliyats*²⁸² which would imply that same parcel of land has been allotted to multiple individuals – something which is not legally permissible. *Kabuliyats* have been executed without proper field level survey of the land which is also a violation of the law, the study notes. After a *kabuliyat* in favour of a person, the law requires that mutation has to be performed which often has not been done.

The report recommends that despite many challenges, the GOB should amend the *Chittagong Hill Tracts Land-Dispute Resolution Commission Act, 2001*,²⁸³ in light of the Peace Accord of 1997 and the Land Commission should start its operations. The report suggests that indigenous people who have been evicted from their land in the course of setting up cluster villages, military camps, police camps, village defence force camps, camps for Bangladesh Rifles (now known as Border Guard Bangladesh); should be listed and re-settled to their land. It opines that until the existing land disputes are resolved, no land survey should take place in the CHT region. The traditional collective indigenous title to land should be constitutionally recognised, the report recommends.

Comments:

The report is quite thorough in its analysis of the land rights related problems confronted by indigenous people in the CHT region. It would appear that without resolving land related disputes between indigenous and non-indigenous population of the CHT region, lasting peace and stability in the region would be elusive. Underscoring the importance of resolving land disputes, the Land Commission had been set up but the commencement of the operation of the Commission has been a sticking point for quite some time. Hence, the factor/s inhibiting its effective functioning and how they may be tackled may merit a separate study.

²⁸² *Kabuliyat* means a registered document supplied to a settler before finalisation of the settlement process.

²⁸³ Act No. 53 of 2001.

Bibliographic Details:

Huda, Shamsul (ed.), *Parbotto Chotrogramer Bhumi Somosya O Paharider Odhikar* (Land Problems and Rights of Hilly People in Chittagong Hill Tracts) (ALRD, 2010)

Title of the Study: Pushed to the Edge: Indigenous Rights Denied in Bangladesh's Chittagong Hill Tracts

Source of Funds: Not available

Implementing Body: Amnesty International

Duration of the Project: Not available

Key-words: Indigenous people, Chittagong Hill Tracts, and Peace Accord

Summary of the Report:

This report assesses the condition of the indigenous people living in the Chittagong Hill Tracts region. The findings of the report are based on interviews with relevant stakeholders, focus group meetings, and written submissions provided to Amnesty International etc. It finds that around 90,000 indigenous families, who left their homes to escape from the fighting, still remain internally displaced as a consequence of their homes being occupied by Bengali settlers.²⁸⁴ The report notes that the Awami League Government has only partially implemented the *Peace Accord* of 1997 with insignificant positive outcomes on the life of the indigenous people and the main opposition party, the Bangladesh Nationalist Party has utterly failed to implement it during their tenure from 2001 to 2006.²⁸⁵

The substantive part of the report commences with a historical background of the indigenous people's struggle for recognition of their rights. The report notes that for avoiding its obligations under the international legal regime, the GOB does not want to recognise this group of people as indigenous people and seek to label them as 'tribal' people. However, the report argues that the plight of this group of people is no different from what is endured by indigenous people in other parts of the world. It also points out that by dint of Bangladesh's ratification of international human rights instruments inter alia; the *International Convention on the Elimination of All Forms of Racial Discrimination*, 1963 and *Indigenous and Tribal Populations Convention*, 1957, and the ICCPR; it is legally bound to uphold the rights of these people.

The report observes that due to a disagreement over the preparation of an electoral voting list, the Hill District Councils are not yet truly operational. The crux of the disagreement is an insistence by the indigenous people on restricting voting rights only to those permanent residents who own land in the region and on the other hand, the GOB wants all permanent residents of the region irrespective of land ownership to have voting rights. While the former option would mean that mostly indigenous people would have voting rights,

²⁸⁴ Amnesty International, *Pushed to the Edge: Indigenous Rights Denied in Bangladesh's Chittagong Hill Tracts* (2013) <http://www.amnesty.org.uk/sites/default/files/pushed_to_edge.pdf> accessed 15 January 2015, at 5.

²⁸⁵ Ibid, at 6.

the latter would mean the inclusion of most of the Bengali settlers.²⁸⁶ The indigenous community and the GOB have opposing views on exactly on how many issues the Hill District Councils have been vested with jurisdiction, but it is clear that the complete vesting of jurisdiction in all areas is yet to occur. The Land right is the most important area over which the Councils do not enjoy jurisdiction.²⁸⁷

The report points out that despite the signing of the *Peace Accord*, the displacement of the indigenous people from their traditionally occupied lands takes place either on the pretext of absence of any legally recognised documents of ownership or that the land is 'protected forest reserve'. Even when due to a rapprochement, they are able to get back to their previously occupied land, the illegal occupiers who forced them to leave escape punishment.²⁸⁸ The report finds that although some army camps have been withdrawn from the region, most camps remain and there is an overwhelming military presence in the region which is a stumbling block to confidence building among the indigenous people. The report mentions that the UN's Special Rapporteur has called for withdrawal of all temporary military camps but the GOB has dismissed the call claiming it as beyond the mandate of the Rapporteur on the pretext that Bangladesh has no indigenous people. Indigenous land has also been compulsorily acquired for building cantonments, other government buildings, and for annexation as forest lands. The report notes that more often than not the acquisition of these lands takes place in breach of both national and international legal norms.²⁸⁹

The report argues that the displacement of indigenous people has severe adverse impact on their livelihood and overall way of life. It mentions that the rate of poverty in the Chittagong Hill Tracts region is higher than the rest of Bangladesh and within the region, the rate of poverty among the indigenous people is higher than that among Bengalis.²⁹⁰ The report apprehends that by virtue of Bengali influx, the indigenous people may have been outnumbered in their own backyards and consequently, face domination in economic and cultural life too. The report finds that a task force which was set up in 1998 for rehabilitating the displaced people in the region is now virtually defunct over a debate about the inclusion of Bengalis among the internally displaced people.

The report notes the dismal failure of the Land Commission to settle even a single dispute. It identifies the dispute over the composition of the Commission (particularly the veto power of the chairperson and the fact that the chairperson was a Bengali) was the main

²⁸⁶ Ibid, at 17.

²⁸⁷ Ibid.

²⁸⁸ Ibid, 23.

²⁸⁹ Ibid, at 24-25.

²⁹⁰ Ibid, at 29.

reason for its inertia. It recommends that the veto power of the Chairperson must be dispensed with and decisions should be based on a simple majority basis. The report suggests that when the Land Commission would commence its business, instead of granting individual rights, it should grant collective rights to land which would acknowledge the community bonding of the indigenous people and make it easier for indigenous women to enjoy rights over land. The report finds that the Land Commission only has the power to recognise the ownership rights of indigenous people but does not hold the power to grant compensation in appropriate cases (when, for instance, the land has changed its character in such a way that it can no longer be returned to the previous owner). At the same time, the report notes that as Bengali settlers have settled in the region with clear endorsement of the GOB or some people may have purchased the land for value without any knowledge of any defect in title, the GOB should provide for their alternative settlement; if they are removed from their land within the region.

The report urges the GOB to investigate all allegations of human rights violations in the region. It calls upon the GOB to refrain from acquisition of indigenous land without free, prior and informed consent of the indigenous people. It also wants that Bangladesh would recognise these people as 'indigenous people'. The report recommends that the electoral process in the Hill District Council be set in motion and that all relevant matters of jurisdiction be transferred to the Councils as envisaged in the *Peace Accord* of 1997.

Comments:

The report seems to be right in arguing that the issue of land rights is the core issue in bringing lasting peace to the region. Many of its recommendations, particularly, the recommendation of making the Land Dispute Commission functional should be implemented. However, whether or not the suggestion to take a decision on a simple majority basis would be workable is uncertain for at least two reasons. Firstly, in essence, it is a judicial body and under the *Peace Accord*, it was envisaged to be headed by a retired Justice. Even more important is that the decision on a majority basis may effectively mean the indigenous people would always have their say which may be fiercely opposed by Bengalis and may ignite fresh controversy. Hence, the restructuring of the Land Commission needs a very rigorous and composed study. However, because of its far reaching impact of the native title, it may be worth exploring in a comprehensive manner whether or not the doctrine of native title can be legally applied in Bangladesh

Bibliographic Details:

Amnesty International, *Pushed to the Edge: Indigenous Rights Denied in Bangladesh's Chittagong Hill Tracts* (2013)
<http://www.amnesty.org.uk/sites/default/files/pushed_to_edge.pdf> accessed 15 January 2015

Title of the Study: The ILO Convention on Indigenous and Tribal Populations, 1957 (No.107) and the Laws of Bangladesh: A Comparative Review

Source of Funds: European Commission's European Instrument for democracy and Human Rights

Implementing Body: International Labour Organization

Duration of the Project: Not available

Key-words: Indigenous rights, indigenous population, tribal population, and ILO Convention No. 107

Summary of the Report:

This report makes a comparison between the laws of Bangladesh relating to indigenous people and provisions of the *ILO Convention on Indigenous and Tribal Populations*, 1957 (Convention No. 107), and wherever relevant, with other ILO Conventions and endeavours to discover as to what extent the national law complies with international law. At the outset, the report demonstrates a conspicuous choice of the GOB in recent years, to avoid using the term 'indigenous' and a preference for the term 'tribal' which is a reversal from its previous stance, as the term indigenous was being used in earlier legal and policy instruments.²⁹¹ The report points out that according to the official census, more indigenous people live in the plain lands than in the CHT region.²⁹² The report notes that according to the official census of 1872, indigenous people constituted around 98 per cent of the total CHT population which dropped to just 51 per cent (however, it suspects that the official figure may be an under-estimation of the actual number) according to the census of 1991.²⁹³ It attributes this gradual demographic shift in the CHT region to the movement of non-indigenous people to this area during the era of independent Bangladesh.²⁹⁴

The report observes that an even sharper numerical decline of the indigenous population has occurred in plain lands where most indigenous communities now live in small pockets only and thus, they have lost their capacity to exert any electoral strength not just in parliamentary elections, but also even in local government bodies which has adversely impacted their capacity for 'participation in elective institutions' as enshrined in Article 5(c)

²⁹¹ Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review* (2009) <http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-dhaka/documents/publication/wcms_114957.pdf> accessed 15 May 2015, at 7-9.

²⁹² Ibid, at 11-12.

²⁹³ Ibid, at 12.

²⁹⁴ Ibid, at 12.

of Convention No. 107.²⁹⁵ According to the report, the gradual migration of non-indigenous people to the CHT region and the Mymensingh region effectively tantamounts to ‘artificial assimilation’ of the indigenous people which is contrary to Article 2.1(c) of Convention No. 107.²⁹⁶ The report demonstrates that only few substantive laws deal with the indigenous people in plain lands, the most important of which is the *State Acquisition and Tenancy Act*, 1950 (Act No. XXVIII of 1950). It notes that Section 97 of which provides that any land belonging to indigenous people cannot be alienated to non-indigenous people without permission of the revenue authorities. However, it notes that in many cases, the government officials act on their discretion without any consultation with the concerned community.²⁹⁷ It recommends that the law reform in this area may provide for prompt modes of disposal of petitions for alienation of land and scope for repossession of alienated land.²⁹⁸

The report observes that sometimes indigenous people are granted short term rights for using reserved forest land but often upon the expiry of the term of the lease, the grant is not extended.²⁹⁹ It further observes that in some places, the indigenous people continue to live in reserved forest land without any legally recognised document which makes them even more vulnerable.³⁰⁰ For protecting the traditional rights of these people, a law entitled Traditional Forest Dwellers (Recognition of Rights) Act was proposed to be enacted. The report laments that the self-governing mechanisms of the indigenous people of plain lands is no longer legally recognised despite the fact that in reality, many disputes particularly those involving personal law issues are settled through the community mechanism.³⁰¹

The report observes that the *Constitution* has no direct provision on indigenous people, but there are provisions in the *Constitution* which effectively deal with them and embody the principle of Article 3 of the Convention 107 which calls for special protective measures for indigenous people.³⁰² Nonetheless, it argues that direct and reverent acknowledgement would ensure that the country’s multicultural heritage is properly reflected.³⁰³ The report finds that the policy instruments of the GOB on indigenous people is rather marked by their lack, and even when policies with bearing on indigenous people are

²⁹⁵ Ibid, at 13.

²⁹⁶ Ibid.

²⁹⁷ Ibid, 14-15.

²⁹⁸ Ibid, at 15.

²⁹⁹ Ibid, at 18.

³⁰⁰ Ibid.

³⁰¹ Ibid, at 19-20.

³⁰² Ibid, at 33.

³⁰³ Ibid, at 34.

formed, the indigenous people get little opportunity to participate which is contrary to Article 5 of Convention No. 107.³⁰⁴ It notes that the *National Poverty Reduction Strategy Paper* of Bangladesh –II (PRSP-II) mentions the GOB’s aspiration for ratification of ILO Convention No. 169 and the application of the provisions of the UN *Declaration on the Rights of Indigenous Peoples*.³⁰⁵

The report points out that both in traditional as well as legally established local government bodies, indigenous women remain under-represented which is inconsistent with the Convention No. 107. In a similar vein, small indigenous groups tend to suffer more than their bigger counterparts as they have fewer representatives.³⁰⁶ The report deduces that due to their small number and marginalised position in the national political system, indigenous people should engage with human rights treaty processes so that they can place their demands to the GOB with more clout.³⁰⁷ Having said that, it notes that the changes in laws and policies which are more benign for the indigenous people have been driven by domestic reform agenda and ILO Convention or other international treaty obligations may have had negligible impact on it.³⁰⁸

The report recommends that the GOB ratify Convention No. 169 of the ILO which is an improved version of the Convention No. 107 incorporating the progressive development of the international law.³⁰⁹ It also recommends that for ensuring representation of indigenous people in local government bodies, there should be reserved seats for indigenous people.³¹⁰ The report advocates for recognition of indigenous land rights based on custom, usage, and prescription.³¹¹ Similarly, it recommends that the *Forest Act* recognises the traditional rights of indigenous people in acquired, vested, and protected forests and their customary laws and unique juridical system.³¹²

Comments:

The report’s inclusive analysis on both the CHT and plain land is useful as apparently the indigenous communities belonging to the latter group seems to be under-represented by

³⁰⁴ Ibid, at 36.

³⁰⁵ Ibid, at 43.

³⁰⁶ Ibid, at 46-47.

³⁰⁷ Ibid, at 54-55.

³⁰⁸ Ibid, at 57.

³⁰⁹ Ibid, at 62-63.

³¹⁰ Ibid, at 63.

³¹¹ Ibid.

³¹² Ibid.

studies. The report's suggestion on reform of Section 97 of the SAT Act seems to have merit, as simple restriction on transfer without any provision for repossession of alienated land may not be very effective. If any representation of indigenous people from plain land in local government bodies such as union *parishads* can be recognised, then it may be expected that such bodies would be more responsive to the needs of indigenous people.

Bibliographic Details:

Roy, Raja Devasish, *The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review* (2009)
<http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-dhaka/documents/publication/wcms_114957.pdf> accessed 15 May 2015

INFORMAL JUSTICE AND ADR

Title of the Study: *Bangladesher Prekhkhopote Bikolpo Birodh Nispotti (ADR) Bastobayon Songkranto Protibedon* (Report on the Implementation of Alternative Dispute Resolution in the Context of Bangladesh)

Source of Funds: South Asian Institute of Advanced Legal and Human Rights Studies (partial)

Implementing Body: Law Commission of Bangladesh

Duration of the Project: Not available

Key-words: Alternative dispute resolution, backlog of cases, and law reform

Summary of the Report:

This report by the LCB seeks to explore the ways for encouraging greater recourse to alternative dispute resolution (ADR) mechanism as a means for reducing the backlog of cases. Its findings are based on questionnaire surveys, a visit to Madaripur Legal Aid Association, and several seminars. The report mentions that apart from the provisions mentioned in the CPC and CrPC, there are a number of other statutes that provide for resolution of disputes through recourse to the ADR mechanism. Nonetheless, based on the information collated from the courts in Dhaka and Gazipur Districts, it notes that only up to 2.5 per cent of the civil cases have been resolved through recourse to the ADR mechanism.³¹³ The report claims that a number of reasons – resolution of disputes through ADR not being compulsory but rather being dependent on the discretion of the court, the absence of specific rules on ADR, absence of any direct involvement of the court in compounding of criminal cases, judges performing facilitating roles in ADR being busy with trial or other cases etc. – acts as impediments to greater utilisation of ADR mechanism in Bangladesh.³¹⁴

For ensuring greater recourse to ADR mechanism in civil cases, the report recommends that by an amendment of Section 89A of the CPC; ADR should be made compulsory, (save in those cases where the court may consider the matter too complex or too difficult to be resolved out of court).³¹⁵ Until an adequate number of qualified mediators are available, a designated Joint District Judge in each district may perform as a mediating court,

³¹³ Law Commission of Bangladesh, *Bangladesher Prekhkhopote Bikolpo Birodh Nispotti (ADR) Bastobayon Songkranto Protibedon* (Report on the Implementation of Alternative Dispute Resolution in the Context of Bangladesh) (Law Commission's Report No. 104, 5 October 2010) <<http://lc.gov.bd/reports/ADR%20final%20Report%202010.pdf>> accessed 29 April 2015, at 2.

³¹⁴ Ibid, at 4.

³¹⁵ Ibid, at 5.

the report recommends. The report suggests that for incentivising the mediators, they may be awarded up to 0.5 per cent of the monetary value of the disputed matter in issue.³¹⁶

For facilitating more frequent recourse to ADR mechanism in criminal cases, the report suggests that the list of compoundable offences as included in the CrPC should be expanded. The report moots that the introduction of plea bargain (plea bargain in essence means an admission of guilt by the accused as a *quid pro quo* for a less severe sentence) can be an option for reducing the backlog of criminal cases. The LCB suggests that in case of offences which are less severe in nature (punishable by an imprisonment of a term of up to 7 years); plea bargain may be a quite effective option.³¹⁷ The report suggests that when the accused does not voluntarily opt for a plea bargain, or when an accused has been punished for the same offence before; then plea bargain should not be allowed as an option. For implementing plea bargain, the report suggests that the introduction of a new chapter 22A, after chapter 22 of the CrPC could be a fitting option.

The report also recommends that specific provisions need to be adopted so that all parties concerned feel encouraged to present evidence and judges render judgements within specific time limits.³¹⁸ For settling petty disputes, the report recommends that the jurisdiction of village courts and municipality courts should be increased to 75,000 taka.³¹⁹ For making these courts more functional, it proposes that an Assistant Judge (for civil matters) and a Magistrate (for criminal matters) for respective areas can be in charge of monitoring and supervising them on a monthly or quarterly basis. The report also emphasises the need for more training for lawyers and judges on the ADR mechanism.

For reducing backlog of cases, the report also suggests that the computerisation of the court's activities can be crucial. It wants to see that the GOB would declare a national policy for better utilisation of the ADR mechanism. It also sees the need for a project of five years' duration on the utilisation of ADR with a funding of at least five billion taka.³²⁰ It further recommends that following the United Nations Commission on International Trade Law (UNCITRAL) model, a National Arbitration and Mediation Council may be formed. For monitoring the implementation of the ADR mechanism in Bangladesh, a committee consisting of five Judges of the AD and HCD of the SC may also be formed, the report puts forward.

³¹⁶ Ibid, at 6.

³¹⁷ Ibid, at 8.

³¹⁸ Ibid, at 9.

³¹⁹ Ibid, at 10.

³²⁰ Ibid, at 11.

Comments:

It is somewhat paradoxical that when the report has identified that one of the reasons for non-utilisation of ADR mechanism to any satisfactory degree is it being contingent on the discretion of the judges; it nonetheless goes on to suggest that the judges may choose which matters should be sent to ADR and which complex or unsuitable matters should be reserved for resolution by the courts. One cannot perhaps escape the fact that even this sort of a determination of ‘complex or unsuitable matters’ is a discretionary function and thus, it may undermine the utilisation of ADR. The report suggests that Orders 10, 12, 13 and 14 of the CPC have to be reformed for speedier resolution of civil disputes but refrains from presenting any framework for such reform. Similarly, it wants to see that proper Rules would be framed for implementing Sections 89A, 89B, and 89C of the CPC but does not provide any detailed guideline on this. Thus, these issues could well merit a further study. In Bangladesh, there is no dearth of laws (both civil and criminal) providing for specific time limits for submitting evidence by the parties or rendering verdicts by the judges; lawyers and courts have taken (or in view of some sort of constraints, may have been compelled to take) a quite relaxed approach to such stipulations.³²¹ Therefore, the report’s suggestion without any further innovations seems to be bereft of any merit. Indeed, it would appear that for such a provision to yield any meaningful result there has to be some sort of mechanism for incentivising or driving lawyers and judges to strictly adhere to the stipulated time limits as far as possible.

Of course, plea bargain has intuitive appeal and should prove to be useful in terms of reducing the backlog in criminal cases. However, in a country where there is a very entrenched culture of extracting forced confessions by torturing suspects (ignoring fairly unambiguous letters of the law), a plea bargain may encourage police to further exert pressure on suspects to opt for voluntary bargain. Hence, for the introduction of such a significant modification in the criminal justice system, the ambit of plea bargain and its procedural safeguards needs to be thought out in much greater detail.

Bibliographic Details:

Law Commission of Bangladesh, *Bangladesher Prekhkhapote Bikolpo Birodh Nispotti (ADR) Bastobayon Songkranto Protibedon* (Report on the Implementation of Alternative Dispute Resolution in the Context of Bangladesh) (Law Commission’s Report No. 104, 5 October 2010) <<http://lc.gov.bd/reports/ADR%20final%20Report%202010.pdf>> accessed 29 April 2015

³²¹ See, for instance, the decision in *Md. Abul Basher v The Judge, First Artha Rin Adalat, Chittagong and Others*, (2009) 29 BLD (HCD) 517, at ; holding that a seemingly mandatory time limit set in Section 37 of the *Money Loan Court Act, 2003* (Act No. of 2003) for settling execution suit by the money loan courts is not mandatory but a non-binding direction, a recommendation.

Title of the Study: NGO-*shalish* and Justice-seeking Behaviour in Rural Bangladesh

Source of Funds: Not available

Implementing Body: Research Evaluation Division, BRAC

Duration of the Project: Not available

Key-words: *Shalish*, alternative dispute resolution, legal aid, and legal aid by NGOs

Summary of the Report:

This report seeks to explore the justice seeking behaviour of rural people and the underlying factors influencing their choice of avenues for seeking justice. It notes that people in rural areas seek to resolve their disputes through *Shalish* (a community based mode of resolution of disputes), ADR mechanism run by NGOs, the village court regime run under the statutory framework, and the formal justice regime.³²² The report finds that it is the easy accessibility in terms of inexpensiveness, familiarity, and informality (having no requirement for formal documents) etc. which makes people to opt for seeking to resolve disputes through *Shalish*. Again, although this type of a community based dispute resolution mechanism is not backed up by any formal sanctions on its authority, the social sanction in the form of a strong community expectation that the decisions rendered through the process will be honoured – forces people to generally accept it.³²³

The report notes that as informal *shalish* does not require any formal document and it is not bound to follow any specific procedure; it has an intuitive appeal to those who want to resolve a dispute without having to endure any procedural complexities which is an integral part of the formal court regime and even NGO led ADR³²⁴ For this reason, when people face procedural complexity even in NGO led ADR mechanism, they may get upset and go back to *Shalish*. As *Shalish* is contingent on the parties to a dispute voluntarily accepting the decision rendered through it, when the acceptance does not occur, the complaining party has to resort to formal judicial procedure. The report finds that when there is substantial disparity between parties to a dispute either in terms of economic or social status, *shalish* almost invariably tends to favour the dominant group.³²⁵

As *shalish* is controlled by local elites, local electoral politics can influence the outcome of a decision rendered through a *shalish*, so could be the issue of kinship when

³²² Md. Abdul Alim and Tariq Omar Ali, *NGO-shalish and Justice-seeking Behaviour in Rural Bangladesh* (Research Evaluation Division, BRAC, 2007) <http://research.brac.net/reports/NGO_Shalish.pdf> accessed 2 May 2015, at 6-7.

³²³ Ibid, at 8.

³²⁴ Ibid, at 9.

³²⁵ Ibid, at 11.

relatives of the elite are a party to a dispute³²⁶. When both parties to a dispute are rich, there may be a propensity for its resolution through *shalish* to trigger further disputes in the form of factionalism.³²⁷ The receipt of outright bribery or other favours by the local elites exerting controls over a *shalish* are often a problem, the report notes.³²⁸

Comments:

People's willingness to seek justice through informal means is not necessarily a conviction on the resilience of the mechanism or its ability to render just resolution of disputes. It is rather the inability to seek access to the formal judicial means due to lack of financial means or other constraints which may push people to take this route. The finding of the report that financially backward people are much more inclined to try to resolve disputes through informal channels³²⁹ would lend credence to this conclusion. The finding of the report that justice seeker's apprehension about or frustration with the formalist approach, taken in the NGO-run informal dispute resolution mechanism sometimes push them to avoid this type of a mechanism would imply that this type of an informal ADR method should take a relaxed approach to formalities.

The report's finding that people want to be reassured about the authority or enforceability of the decision obtained through a dispute settlement mechanism³³⁰ is important. This finding would imply that for informal justice in rural areas rendered under the statutory regime (that is the village courts) to be more effective, it should have the authority to enforce its decisions. The structural and operational flaws of even formal ADR mechanism in rural areas would imply that this ADR mechanism should only deal with petty disputes and complex matters such as domestic violence should remain beyond its jurisdiction. In other words, just because this is a cheaper avenue to dispense with justice or a particular type of dispute occurs very frequently - cannot justify settling them through informal justice mechanism.

Bibliographic Details:

Alim, Md. Abdul and Tariq Omar Ali, *NGO-shalish and Justice-seeking Behaviour in Rural Bangladesh* (Research Evaluation Division, BRAC, 2007) <http://research.brac.net/reports/NGO_Shalish.pdf> accessed 2 May 2015

³²⁶ Ibid, at 11-12.

³²⁷ Ibid, at 12.

³²⁸ Ibid, at 13.

³²⁹ Ibid, at 7.

³³⁰ Ibid, at 16.

Title of the Study: Review Report on Village Courts Legal Framework

Source of Funds: United Nations Development Fund and European Union as part of a project titled ‘Activating Village Courts in Bangladesh’

Implementing Body: Local Government Division, Ministry of Local Government, Rural Development and Cooperatives

Duration of the Project: 2010-2012

Key-words: Alternative dispute resolution, village court, and law reform

Summary of the Report:

As one of the four components of a broader project entitled ‘Activating Village Courts in Bangladesh’, this report assesses the legal framework of the village courts under the *Village Courts Act, 2006*³³¹ and makes many recommendations for amending the Act in order to render the village courts more effective. The report presents a legislative history of the local justice system in Bangladesh and notes that such a system received statutory recognition for the first time by the enactment of the *Village Chaukidari Act, 1870*.³³² This legislative history is followed by a fairly straightforward narration of the relevant legal provisions of the *Village Courts Act* and the civil and criminal matters triable under it. This narration is followed by a brief overview of local justice mechanism in India, Papua New Guinea, the Philippines, and New York State of the USA.

The report finds that in view of the prevalent socio-economic context, at 25,000 taka, the jurisdictional ceiling fixed by the *Village Courts Act* (as it then was) is too low and should be increased up to 50,000 taka.³³³ The report notes that many of the Judicial Magistrates, who took part in a workshop, are of the opinion that all compoundable matters under the CrPC may be rendered within the jurisdiction of village courts, which would ensure easier access to justice for the disadvantaged groups and also reduce the backlog of cases.³³⁴ The report points out that when representatives of the parties cannot be appointed (because the parties may have failed to nominate them), although Section 5(5) of the *Village Courts Act* allows the Chairperson of a union *parishad* to complete the function of the village court, it is silent on the matter of the composition of the court in such cases. Whether a decision rendered by the village courts in this type of a situation is appealable is not clear too, and these two issues

³³¹ Act No. 19 of 2006.

³³² Bengal Act VI of 1870 (now stands repealed).

³³³ Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, *Review Report on Village Courts Legal Framework* (2012) <<http://www.villagecourts.org/Publication/Legal%20Framework.pdf>> accessed 1 May 2015, at 35.

³³⁴ Ibid, at 36.

should be clearly spelled out, the report suggests.³³⁵ It notes that some of the experts have opined that maintaining a gender balance in the composition of the village courts and electing judicial members of the village courts (that is apparently the four members who are currently nominated by the two parties) directly during union *parishad* elections may be considered.³³⁶

The report notes that some opine that all decisions rendered by the village courts should be appealable, but it rightly dismisses such opinion by pointing to the Preamble of the *Village Courts Act* indicating that it is meant for rendering expeditious remedies and allowing appeals from all decisions would negate that purpose.³³⁷ The report notes that a suggestion has been made by a bureaucrat that an appellate authority consisting of seven members in each *union parishad* may be established.³³⁸ The report observes that the existing procedure of recovering money through the *Public Demands Recovery Act*, 1913 (Bengal Act No. III of 1913) is too cumbersome and it may be replaced by the procedure provided under the *Local Government (Union Parishad) Act*, 2009 (Act No. 61 of 2009).³³⁹ It observes that the police are empowered to investigate into cognizable offences which are pending resolution before the village courts and many concerned with village courts feel that this provision is a hindrance to the smooth disposal of matters by the village courts.³⁴⁰ However, the report considers that the issue demands a meticulous enquiry and hence, it refrains from passing any recommendation on it.³⁴¹

The report considers that appointing a court assistant may help people to receive any necessary legal aid which may be required for easily accessing village courts. It notes that the Chairperson of the Parliamentary Standing Committee on Ministry of Local Government, Rural Development and Cooperatives has suggested that lawyers should be allowed to plead before the village courts and their fees should be borne by the GOB.³⁴² The report also suggests that the officials of the village courts should be paid some sort of honorarium.³⁴³ The report notes that there may be a case for inclusion of domestic violence offences as triable by the village courts, but at the same time it concedes that such an inclusion may

³³⁵ Ibid, at 37.

³³⁶ Ibid, at 36-37.

³³⁷ Ibid, at 38.

³³⁸ Ibid.

³³⁹ Ibid, at 38-39.

³⁴⁰ Ibid, 39.

³⁴¹ Ibid.

³⁴² Ibid, at 40.

³⁴³ Ibid, at 46.

overburden the village courts.³⁴⁴ Annexure A to the report enlists the recommendations that have come through the workshops and focus group discussions.

Comments:

By passing the *Village Courts (Amendment) Act, 2013* (Act No. 36 of 2013), the Parliament has made some changes adopting the recommendations made in this report. For instance, by amending Section 5(1), the law now provides for the appointment of a woman in a village court when the matter before it relates to the interests of a minor or woman. Similarly, by amending Section 5(5), the law now provides that when either party to the dispute fails to make her/his nomination to the village court, the chairperson would issue a certificate stating that the applicant may file a case in the court of competent jurisdiction. However, on a plain reading of this provision, it seems bizarre that when a responding party would fail to make a nomination, the matter can still be litigated. The reason is that this would allow an unwilling responding party to delay the resolution of the dispute and push the complaining party to seek recourse to the formal judicial procedure which may entail significantly more costs.

Again, since the amendment in 2013, the compensation awarded by the village courts are no longer recoverable under the *Public Demands Recovery Act, 1913* but recoverable under *Local Government (Union Parishad) Act, 2009* and the jurisdictional limit has also been extended to 75,000 taka. Although the report does not pass any opinion on the suggestion that an appellate authority with seven persons may be established, but it may be said that in order to avoid tardiness, this suggestion should be overlooked. After all, the village court is a quasi-judicial body and when its decisions are passed by 3:2 majorities, they are appealable before formal judicial bodies and hence, another layer of quasi-judicial body may not be very useful. Again in a village court which is conceived as a sort of community based, semi-formal mechanism for dispute resolution, opening doors for lawyers to appear before it does not seem to be warranted too.

Bibliographic Details:

Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, *Review Report on Village Courts Legal Framework* (2012) <<http://www.villagecourts.org/Publication/Legal%20Framework.pdf>> accessed 1 May 2015

³⁴⁴ Ibid, at 41.

LABOUR ISSUES

Title of the Study: Decent Work and Bangladesh Labour Law: Provisions, Status, and Future Directions

Source of Funds: Not available

Implementing Body: Bangladesh Institute of Labour Studies (BILS)

Duration of the Project: Not available

Key-words: Labour law, work safety, rights of workers, and enforcement of labour rights

Summary of the Report:

This report seeks to explore the existing situation of the protection of labour rights in Bangladesh and to provide impetus to law reform so that workers in Bangladesh can enjoy a decent life. It also assesses the awareness of workers about their legal entitlements. The report's assessment framework is divided into five core components, namely: employment relations, occupational safety and health, welfare and social protection, labour relations and social dialogue, and enforcement of laws and regulations.³⁴⁵ The assessment of the report is conducted mainly in relation to ready-made garments and construction works - one formal and the other an informal sector.³⁴⁶ The findings of the report are based on questionnaire survey, review of secondary literature, key informant interviews, and focus group discussions.

Section two of the report contains a quite extensive description of the national and international legal provisions on various important aspects of rights of workers. Section three of the report notes that the currently enforced core labour legislation, *Bangladesh Labour Act, 2006 (Labour Act)* has made some improvements in the protection of labour rights in terms of more clarified definitions of the various terms used in the statutes, widened scope of application in terms of sectoral coverage, the requirement of identification cards for workers, more liberal provisions on minimum wage and overtime work, entitlements on termination of work at the worker's instance, and a list of hazardous works where children cannot be employed etc.³⁴⁷ It also notes similar improvements on legal provisions concerning occupational health and safety which includes setting up a National Industrial Health and Safety Council, introduction of mandatory provisions on fire-fighting drills, and record

³⁴⁵ Jakir Hossain, Mostafa Ahmed, and Afroza Akter, *Decent Work and Bangladesh Labour Law: Provisions, Status, and Future Directions* (2010), at 9-10.

³⁴⁶ Ibid, at 11.

³⁴⁷ Ibid, at 47-48.

keeping on safety etc.³⁴⁸ With regard to provisions on welfare, the report notes the introduction of death benefits, extended maternity leave, increased amount of compensation in cases of injury occurring in the course of employment, introduction of group insurance scheme, and extension of the breadth of provident fund as positive developments.³⁴⁹ In terms of the labour relations and social dialogue, the report finds that the process of formation of trade unions is now more specific; there is greater restraint on transferring trade union leaders; and there is also provision on allowing the trade union federations to operate as collective bargaining agents (CBAs).³⁵⁰

The report notes that despite some progresses achieved through the *Labour Act*, the statutory definition of worker is still not wide enough to include workers in agricultural sector, domestic help, and schools.³⁵¹ While the law requires that employers maintain a service book for workers, the onus is on workers to pay for keeping a copy of the service book for their use.³⁵² This report argues that the notice period for termination of employment by a worker is too long and the notice period for an employer to terminate the employment is too short.³⁵³ It argues that allowing women to work during night hours without adequate mechanism for ensuring their safety is not acceptable.³⁵⁴ It also points out that the law does not contain any provision on medical allowance, transport allowance, or recreational facilities.³⁵⁵ According to the report, the provision on leave is inadequate and discriminatory based on the type of establishment in which they work, and does not allow them to receive any monetary benefit in lieu of leave.³⁵⁶

The physical infrastructure required to be maintained for various industries have not been sketched in the law keeping in mind the varying requirements of different industries, the report finds.³⁵⁷ On a similar note, it finds that while the law provides for some welfare provisions, they are not universally applicable to all industrial sectors.³⁵⁸ The social security

³⁴⁸ Ibid, at 48-49.

³⁴⁹ Ibid, at 49.

³⁵⁰ Ibid, at 49-50.

³⁵¹ Ibid, at 50.

³⁵² Ibid, at 51.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Ibid, at 51-52.

³⁵⁶ Ibid, at 52-53.

³⁵⁷ Ibid, at 54.

³⁵⁸ Ibid.

provisions are often too restrictive in terms of their requirement that the worker must have spent considerable amount of time in a particular workplace for being entitled to enjoy them and the compensation payable upon death or injury in the course of employment, is not sufficient.³⁵⁹ The report notes that keeping the membership of trade unions open only to those employed in the particular establishment and the prohibition on setting up of trade union offices within 200 yards of the establishment would curtail the freedom to form and operate trade unions.³⁶⁰ It points out that there is no explicit rule on ensuring the representation of women in trade unions and also that while in case of trade unions for workers, support of at least 30 per cent of the workers is necessary, there is no such restriction on trade union of employers.³⁶¹ The report argues that while calling a strike is contingent on the support of fixed number of workers in the establishment, lock-out is not subject to any such provision.³⁶² The punishment for infringement of the *Labour Act* is also too lenient, it argues.³⁶³

Chapter four of the report presents data on the application of legal provisions in practice which shows wide gap between law and practice. For instance, it finds that although employers in garment industries prepare appointment letters for workers, they often do not hand it over to the workers.³⁶⁴ Very few of the construction workers are issued with any appointment letter or identity card.³⁶⁵ Even in majority of the garment factories, no service book or employee register is maintained, the report notes.³⁶⁶ Disregarding the law, employers often terminate the workers' employment without any proper prior notice.³⁶⁷ Workers have to work beyond the maximum number of hours allowed and for such work, sometimes they are not paid due overtime allowance.³⁶⁸ The report finds that while workers are generally paid the minimum wage fixed by the law, such wage is inadequate for a decent living.³⁶⁹ It claims that the provision on workers' participation in the profit of the company is almost never honoured

³⁵⁹ Ibid, at 54-55.

³⁶⁰ Ibid, at 55.

³⁶¹ Ibid, at 55-56.

³⁶² Ibid, at 56.

³⁶³ Ibid.

³⁶⁴ Ibid, at 62.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Ibid, at 66-67.

³⁶⁸ Ibid, at 67-68.

³⁶⁹ Ibid, 74-75.

and the workers are deprived of leave as per law.³⁷⁰ It observes that while employment of children has reduced, it still continues and some children work for as many hours as adults do.³⁷¹

The report finds that workers are not adequately advised of work place related safety hazards and more often than not the same lack of awareness and preparedness is applicable to their supervisors or managers.³⁷² When the workers suffer from any accident, almost non-existence of various social security benefits make them very vulnerable.³⁷³ It notes that very few workers actually take part in trade unions.³⁷⁴ The report observes that the inspection of factories rarely occurs and labour inspectors tend to visit workplaces only after accidents take place and legal proceedings before the labour courts can be costly and time consuming and thus, tend to favour employers who have much more resources than workers.³⁷⁵ Annexure to the report contains a long list of provisions on which legal reform is needed.³⁷⁶

Comments:

The report's finding on the inadequacies of the existing statutory provisions should be seriously considered by policy makers. Particularly, the inclusion of domestic workers and agricultural workers within the purview of statutory law may somewhat reduce their vulnerabilities. The report rightly argues that the enforcement mechanism should focus on pro-active investigation; not simply react to complaints or accidents. While the report suggests that the law should make it obligatory for the employers to seek consent from workers before asking them to work during holidays,³⁷⁷ due to the finding of the report that workers are not so aware about the content of their statutory or contractual rights,³⁷⁸ it may be suggested that in some areas the focus of the law should be more on prohibition of contracting out of the explicit provisions of the statute curbing the contractual freedom and exploiting the vulnerability of workers. The labour leaders as well as employers and the GOB should also work on devising mechanisms for greater representation of women in trade unions.

³⁷⁰ Ibid, at 76-78.

³⁷¹ Ibid, at 79-80.

³⁷² Ibid, at 81.

³⁷³ Ibid, at 89-90.

³⁷⁴ Ibid, at 90-93.

³⁷⁵ Ibid, at 100-101.

³⁷⁶ Ibid, at 118-148.

³⁷⁷ Ibid, at 115.

³⁷⁸ Ibid, at 64-65.

Bibliographic Details:

Hossain, Jakir, Mostafa Ahmed and Afroza Akter, *Decent Work and Bangladesh Labour Law: Provisions, Status, and Future Directions* (2010)

Title of the Study: Legal Reform to Prevent Workplace Death and Injury including Analysis of Worker Deaths, 2010-2012

Source of Funds: Diakonia and Anti Trust

Implementing Body: Safety and Rights

Duration of the Project: 2010 - 2012

Key-words: Workplace safety, deaths in workplace, and reform of labour law

Summary of the Report:

This report documents death of workers occurring at the workplace due to accidents arising out of occupational health and safety hazards, from 2010 to 2012. The documentation includes both manufacturing and service sectors and formal and informal sectors. The record of these accidents is based on information obtained by monitoring fifteen national newspapers and eleven regional newspapers of five metropolitan cities (Barisal, Chittagong, Khulna, Rajshahi, and Sylhet).³⁷⁹ The report acknowledges that while there may be some issues with the factual accuracy of the newspaper reports, it claims that in collaboration with BRAC's Human Rights and Legal Services, it has investigated 474 cases of deaths and discovered that newspaper reports in an overwhelming majority of cases were accurate with regard to major details. Chapters 2 to 4 of the report contain details of all the reported incidents of death of workers occurring in 2010, 2011, and 2012.³⁸⁰

Chapter five of the report presents data on the number of deaths by age and gender of the workers and by the respective industries and districts where they have occurred, and the causes which have triggered them. According to the report, during the period of its coverage, 1261 death of workers at the workplace occurred.³⁸¹ It finds that in those cases, where the sex of the deceased workers could be known, around 95 per cent of those who died were male.³⁸² It finds that in terms of the number of worker deaths, the construction industry happens to be the most hazardous one and fires, electrocutions, and falls from heights are the most common causes of death of workers.³⁸³

Chapter six of the report discusses some important provisions of the law and makes some recommendations for reform in the relevant statute, i.e. the *Labour Act*. The report

³⁷⁹ Safety and Rights, *Legal Reform to Prevent Workplace Death and Injury Including Analysis of Worker deaths, 2010-2012* (2013) <<http://www.safetyandrights.org/documents/Workplace%20death%202010-2012.pdf>> accessed 12 May 2015 at 1.

³⁸⁰ Ibid, at 67.

³⁸¹ Ibid, at 67.

³⁸² Ibid.

³⁸³ Ibid.

notes that though this Act has expanded the scope of its sectoral coverage, there are still issues of concern. It argues that as ‘offices of or under the Government’ are excluded, it is not clear whether it would apply to statutory corporations and autonomous bodies and as some GOB owned bodies are engaged in hazardous manufacturing, it finds no reason for them to be excluded.³⁸⁴ Similarly, sectors where huge numbers of workers are employed i.e. in domestic work or small agricultural farms, are excluded from the purview of the *Act*; which must be changed, it argues.³⁸⁵ The report finds no reason why educational and research organisations would be excluded and thus, would effectively remain out of the purview of statutory obligations on workplace safety and health.³⁸⁶ Referring to the findings of a research commissioned by the ILO, the report claims that around one-third of the work related injuries occur in small factories and small factories can often be the most lethal ones and accordingly, the exemption given to factories with less than five workers should be dispensed with.³⁸⁷

The report points out that regarding the obligations imposed on safety, health, and welfare measures as stipulated in chapters five to eight, in various situations a confusion may arise as to whether the employer or sub-contractor would be responsible and for addressing this confusion, the report recommends that the *Labour Act* adopts the approach taken in the *Factories Act*, 1965 (Act No. IV of 1965) (now repealed) and makes occupier (meaning, in essence, the person who holds control over the work) responsible.³⁸⁸ It further recommends that in addition to the specific obligations imposed upon the occupiers, the *Labour Act* should also impose a general responsibility on them to take reasonable care to ensure the safety of workers.³⁸⁹

The report points out that the current statutory provisions authorise the labour inspectors to ask employers to make any improvement only when the condition is dangerous to human safety which is quite a high threshold and proposes an alternative threshold of ‘unsafe’.³⁹⁰ Similarly, it notes that the existing law is equivocal on the point whether the inspectors can ask for improvement on any aspect of the operation of a factory or if they are only empowered to ask for improvements on aspects of the building or plant and advocates for the former approach.³⁹¹ The report claims that it is not aware of any criminal case filed in

³⁸⁴ Ibid, at 70-71.

³⁸⁵ Ibid, at 71.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Ibid, at 72.

³⁸⁹ Ibid, at 73.

³⁹⁰ Ibid, at 79.

³⁹¹ Ibid.

the labour courts and argues that the insufficiency in the number of inspectors, lack in their capacity to run prosecutions, lack of trade unions are the reasons that explain this phenomenon.³⁹² It suggests that subject to the consent of the Factory Inspectorate, registered NGOs should be authorised to file criminal cases for violation of labour laws.³⁹³

Comments:

The substantial number of incidents (though not in terms of details) mentioned in the report, may act as a precursor to further empirical works on workplace related deaths and injuries. The report's recommendations particularly those on expanding the sectoral coverage of the *Labour Act* seems very cogent. In fact, as far as safety is concerned, it is not the private or public nature of a workplace or the number of workers employed, it is rather the hazards posed which should be the decisive factor. While in high-profile cases, NGOs and others interested parties may file public interest litigations, unless criminal cases are allowed to be filed by NGOs, many criminal offences may go unpunished. If frivolous claims are a concern in this regard, the requirement of consent of Labour Inspectorate should dispel that.

Bibliographic Details:

Safety and Rights, *Legal Reform to Prevent Workplace Death and Injury Including Analysis of Worker deaths, 2010-2012* (2013)
<<http://www.safetyandrights.org/documents/Workplace%20death%202010-2012.pdf>>
accessed 12 May 2015

³⁹² Ibid, at 80.

³⁹³ Ibid.

Title of the Study: Security and Safety Net of Garments Workers: Need for Amendment of Labour Law

Source of Funds: United Nations Development Programme

Implementing Body: National Human Rights Commission

Duration of the Project: Not available

Key-words: Garment workers, labour rights, safety of workers, security of workers, and reform of labour law

Summary of the Report:

This report examines the state of job security, trade union rights, and safety at work and other associated aspects of the life of garment workers in Bangladesh. The report is prepared on the basis of study of the relevant legal provisions, core international conventions of the International Labour Organization, interview of garment workers, and a focus group discussion. The report points out that at least around half of the Members of Parliament in Bangladesh are either directly or indirectly connected with the ownership of garment factories which clearly indicates the political clout of the owners.³⁹⁴ It narrates the legal provisions relating to the appointment, termination of service, compensation in case of injury or death, injury occurring in the course of work, group insurance scheme, maternity leave, and other benefits and security to which garment workers in Bangladesh are legally entitled to. However, referring to secondary sources, the report notes that making a mockery of their legally guaranteed rights, more than half of the female workers do not enjoy maternity leave.³⁹⁵ Similar gap between law and practice also occurs in other matters such as the right to leisure or recreation.³⁹⁶

The report states that many factories do not even pay garment workers the minimum wages fixed by law.³⁹⁷ The report states the amount of money payable to a worker for accidents leading to permanent disablement or to the members of her/his family in case of her/his death is too low. It suggests that compensation payable in both of these cases should be raised.³⁹⁸ According to the report, because of the stringent threshold for forming a trade

³⁹⁴ While the report does not directly state so, heavy political clout of the owners may mean greater vulnerability of the workers.

³⁹⁵ Syed Robayet Ferdous et. al., *Security and Safety Net of Garments Workers: Need for Amendment of Labour Law* (2014) <<http://nhrc.org.bd/PDF/Study%20reports/GARMENTS%20WORKERS.pdf>> accessed 15 January 2015, at 23.

³⁹⁶ Ibid, at 24.

³⁹⁷ Ibid, at 24-25.

³⁹⁸ Ibid, at 25.

union, around 5 per cent of garment workers have been able to form trade unions.³⁹⁹ Of around 7,000 garment factories in Bangladesh, there are just 139 trade unions of which only around 25 are active and only 5 of them happen to be collective bargaining agents, it notes.⁴⁰⁰ The report does not present any segregated number for garment factory related labour disputes pending before labour courts, but notes that existing one Labour Appellate Tribunal and 7 Labour Tribunals are not capable to dispose of around 12,000 pending labour related legal disputes.⁴⁰¹

The report states that in violation of the legal regulations, workers are compelled to work in unsafe, overcrowded, and hazardous conditions contributing to their injuries and deaths. Noting that most workers have no place to live close to their factories and are forced to live in unsafe slums at exorbitant rents gobbling up a significant portion of their income, the report suggests that the labour laws may provide for supervised housing facilities for garment workers.⁴⁰² The report argues that existing National Council for Industrial Health and Safety as envisaged under Section 323 of the *Bangladesh Labour Act, 2006* consists mainly of bureaucrats who may not be sensitive to the interest of the workers.⁴⁰³ It suggests that there should be a parallel committee which should be constituted of representatives of workers exclusively.⁴⁰⁴ The report recommends that for approval of buildings where garment factories will be running, there must be a ‘Special Approval Authority’⁴⁰⁵ but does not provide who it should consist of or what value it would add to the existing building permits regulatory regime.

The report hails the inspection of garment factories by ‘Accord’ and ‘Alliance’ and notes that discussants at the focus group discussions have reported that garment owners are working on improving the security and safety of garment workers.⁴⁰⁶ However, it rightly notes that the inspection by such alliance of workers is the outcome of special circumstances and may not last long. Hence, the report recommends that the government employ 30 special monitoring cells for carrying on inspection of garment factories on a random basis and also

³⁹⁹ Ibid, at 46.

⁴⁰⁰ Ibid, at 27.

⁴⁰¹ Ibid.

⁴⁰² Ibid, at 48.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid, at 47

⁴⁰⁶ Ibid, at 46.

employ 5 apex monitoring cells to inspect factories which have been already inspected by special monitoring cells.⁴⁰⁷

The report notes that due to the anxiety of losing their jobs, the workers generally do not disclose any faulty aspect of the safety measures in factories in which they work and thus the efficacy of inspection by inspectors gets diminished. Hence, it suggests that the labour laws should provide that when a worker would disclose any flaw in the factory, she/he would not be fired under any circumstances.⁴⁰⁸ However, it is difficult to see how such a provision would be practicable as employers would not terminate the job of such a worker on account of their disclosure to inspectors but would attribute any termination to some other reason. Similarly, it seems unrealistic that just because a worker has disclosed faults in a factory in which she/he works that should grant her/him perpetual job security at that factory. Probably, a better way to incentivise disclosure and protect the interest of workers would be to impose fine on the factory owners and pay the workers out of that amount. The report rightly concludes that monitoring of compliance with safety and security standards in garment industries should not be driven by the desire for satisfying disgruntled buyers, rather be driven by a desire for operating ethically and sustainably.⁴⁰⁹

Comments:

As the workers in export processing zones are outside of the scope of this report, the situation of garment workers in such zones may merit another study. Some of the diagnoses of the problems of the workers of the report may be apt but the remedies suggested for addressing them has to be designed in much greater detail. For example, probably most observers would agree that the amount payable as compensation for permanent disablement or death of workers occurring in the course of employment should be increased. But the suggestion of the report in the form of fixed numbers (2 hundred and fifty thousand takas for death and 3 hundred thousand takas for permanent disability) bereft of any analysis of their basis is debatable. Even if the numbers are suitable, it may well be necessary to formulate a more calculated number which would be able to adjust with inflation and other related factors. Similarly, provision for supervised housing of garment workers may also be a very good idea but its details need to be worked out.

Bibliographic Details:

Ferdous, Syed Robayet et. al., *Security and Safety Net of Garments Workers: Need for Amendment of Labour Law* (2014) <http://nhrc.org.bd/PDF/Study%20reports/GARMENTS%20WORKERS.pdf> accessed 15 January 2015

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid, at 49.

⁴⁰⁹ Ibid, at 51.

LAW ENFORCING AGENCIES EXCLUDING POLICE

Title of the Study: “Crossfire”: Human Rights Abuses by Bangladesh’s Rapid Action Battalion

Source of Funds: Not Available

Implementing Body: Human Rights Watch

Duration of the Project: April 2010 to March 2011

Key-words: Crossfire, Rapid Action Battalion, extrajudicial killing, torture, and enforced disappearance

Summary of the Report:

The report discusses the incidents of extrajudicial killings, ‘disappearances,’ and torture occurring in and around Dhaka from January 2009 to 2011 by members of an elite law enforcing agency, the Rapid Action Battalion (RAB). The report is based on interviews with more than 80 victims, witnesses, human rights activists, judges, journalists, law enforcement officials, and lawyers. It also relies on the media reports on alleged abuse of powers by members of the RAB. The report notes that the research team working on it, contacted members of law enforcing agencies and relevant Ministers but did not receive their response.⁴¹⁰

The report suggests that RAB, a combined force consisting of members of the military, police and other law enforcement agencies of Bangladesh routinely kills people. It claims that around 200 people have been killed by various operations of the RAB in the period covered by the report.⁴¹¹ The report presents some detailed information on the incidents of torture, enforced disappearance, and death by members of the RAB. It laments the official position maintained by the government that those who are killed by the RAB, are actually killed by actions of the members of the force acting in self-defence. The report makes an observation as to the reversal in the position of the political parties; that is while in opposition they are critics of the RAB but become its staunch defenders when they form the Government.

It also points to a shocking attitude of some in the Government that killings by the RAB is not a matter of concern as after all those who are killed by the RAB are criminals – an attitude which is a blatant disregard of the age-old presumption of innocence. Sometimes, members of the RAB have killed innocent people on the basis of mistaken identity, it

⁴¹⁰ Human Rights Watch, “Crossfire”: *Human Rights Abuses by Bangladesh’s Rapid Action Battalion* (2011) <<http://www.hrw.org/sites/default/files/reports/bangladesh0511webwcover.pdf>> accessed 12 January 2015, at 11-12.

⁴¹¹ Ibid, at 2.

notes.⁴¹² The report states that in recent times, for denying their involvement in crimes, members of the RAB sometimes resort to enforced disappearance that is they just grab people away in plain clothes and then those persons are never found.⁴¹³

The report notes that a Division Bench of the HCD which issued a *suo motu* rule asking the Government to halt extrajudicial killings was reconstituted by the Chief Justice and the matter was not sent to a new Bench even after the elapse of more than one year.⁴¹⁴ The report raises a fundamental concern as to whether members of the armed forces who are not trained for law enforcement duties can acquire the necessary skills for doing so in their relatively limited stint with the RAB.⁴¹⁵ Paradoxically, the report notes that despite the serious allegations about the modus operandi of the RAB, because of its professional and well equipped nature among the law enforcing agencies in Bangladesh, governments of economically developed countries such as Australia, the UK, and the USA want to work with it in counter-terrorism measures.⁴¹⁶ These governments are working with the RAB in imparting human rights training to the members of the force and improving internal accountability. The report rightly posits that the efficacy of such training without inflicting effective punishment on the violators would be limited.

The report casts a doubt on the government's political will or ability to effectively control the activities of the RAB. The report argues that as long as the culture of impunity is continued, the flagrant abuse of powers by the RAB would naturally persist. The report notes that in some cases, the government has claimed that after conducting internal inquiries, disciplinary actions have been taken against responsible members of the RAB. But claims that despite its several attempts it has never been able to get hold of any information on such actions.⁴¹⁷ The report wants that it would be mandatory for the RAB to report to the government and NHRC with comprehensive information on arrests made by the agency, persons held in its custody, and killings by its members.

The report demanded that if there was no drastic improvement of the activities of the RAB within 6 months of its publication, then the RAB should be disbanded and supplanted by a new agency.⁴¹⁸ The report wants to see that the RAB or its substitute would be a fully civilian institution where there would be no members of the armed forces.⁴¹⁹ The report

⁴¹² Ibid, at 29-30.

⁴¹³ Ibid, at 7.

⁴¹⁴ Ibid, at 34-35.

⁴¹⁵ Ibid, at 2, 8, 45.

⁴¹⁶ Ibid, at 40-42.

⁴¹⁷ Ibid, at 6-7.

⁴¹⁸ Ibid, at 45

⁴¹⁹ Ibid.

underscores the need for an inquiry by an independent commission for evaluating the operations of the RAB and punishing those who are responsible for violation of laws. In order to curb torture by the RAB, it advocates for allowing human rights organisation to have unfettered access to RAB stations and detention cells.⁴²⁰

The report wants the NHRC to be equipped enough with adequate finance and manpower to investigate each allegation of abuse of powers by the RAB.⁴²¹ The report suggests that foreign governments or international organizations should not work with the RAB in law enforcement or counter-terror operations, unless the agency quits its illegal activities. It also wants the government to invite appropriate United Nations Mechanism such as a special rapporteur to investigate allegations of violation of laws by the RAB and make recommendations to address them.⁴²²

Comments:

Most independent observers would agree that despite the RAB's success in counter-terror or other operations, there is a widespread concern about the abuse of power in operations of the RAB. Of course, its success in counter-terror operations cannot be a ground for impunity. However, the disbanding of the RAB may not be a politically palatable option for the government. But the report has made many other less drastic suggestions which the government and other stakeholders should be able to follow. The report seems to have rightly raised a question as to the engagement of the members of the armed forces in law enforcement activities as a part of the RAB. Hence, a study may examine the motivation behind such engagements, the value added by it and how similar outcomes can be achieved by a fully civilian organisational structure within the RAB. The proposal for a scheme for a compensatory mechanism for providing some financial reliefs to victims of abuse of powers by the RAB may also be examined.

Bibliographic Details:

Human Rights Watch, *“Crossfire”: Human Rights Abuses by Bangladesh’s Rapid Action Battalion* (2011)
<<http://www.hrw.org/sites/default/files/reports/bangladesh0511webwcover.pdf>> accessed 12 January 2015

⁴²⁰ Ibid, at 43.

⁴²¹ Ibid.

⁴²² Ibid, at 46.

Title of the Study: “The Fear Never Leaves Me”: Custodial Deaths, Torture and Unfair Trials after the 2009 Bangladesh Rifles Mutiny

Source of Funds: Not available

Implementing Body: Human Rights Watch

Duration of the Project: Not available

Key-words: Border security force, BDR mutiny of 2009, and custodial torture

Summary of the Report:

This report seeks to document the alleged torture inflicted on the members of the Bangladesh Rifles (BDR), now known as Bangladesh Border Guard (BGB) on allegations of their involvement in the killings and other brutalities that took place during the bloody mutiny of February 2009. The report is based on interviews, a critical dissection of the investigation reports on the mutiny prepared by separate probe committees of the GOB and military, reports prepared by local NGOs on alleged incidents of custodial torture and killing of members of BDR/BGB. Regarding the incidents that took place during the mutiny, the report rightly points out the self-contradiction in the report by the military that there was no genuine reason or substantial grievance among the soldiers of BDR, but at the same time accusing the Ministry of Home Affairs for failing to appreciate the gravity of the grievances.⁴²³ It also points out that the alleged sinister design of destabilising BDR or tarnishing the reputation of the military force or creating turmoil in Bangladesh prompted the mutiny, has not been supported by any evidence.⁴²⁴

The report finds that there are many instances of de facto detention without legal sanction, unexplained disappearances, torture and killings during the detention of not just the BDR soldiers (some of whom were not stationed at the barrack where the mutiny took place and seemingly not connected with any criminal offence), but sometimes even their family members who had no apparent nexus to the mutiny.⁴²⁵ Noting that around 6,000 BDR members have been arrested for their alleged involvement in the mutiny, the report raises serious concerns about the procedural fairness in the trial process in both the military tribunals (trial for involvement in the mutiny) and normal criminal trials in regular courts (trial for committing criminal offences).⁴²⁶ These include not being properly informed of the charges, intimidation to give testimony supporting the version of the prosecution, extraction

⁴²³ Human Rights Watch, “*The Fear Never Leaves Me*”: Custodial Deaths, Torture and Unfair Trials after the 2009 Bangladesh Rifles Mutiny (2012) <<http://www.hrw.org/sites/default/files/reports/bangladesh0712ForUpload.pdf>> accessed 19 April 2015, at 23.

⁴²⁴ Ibid, at 22.

⁴²⁵ Ibid, at 26-41.

⁴²⁶ Ibid, at 42-52.

of extra-judicial confession, accused not being able to appoint lawyers or the lawyers not getting enough opportunity for preparing the defence case which is hindered by excessive length of the charge sheet and very limited opportunity for the defence lawyers to communicate with their clients etc.⁴²⁷

The report demands an independent inquiry into all allegations of custodial torture perpetrated on BDR members and pending such an inquiry, an inquiry by the existing prosecutors and prosecution of those who are found to be responsible.⁴²⁸ It also wants that the GOB would disband the RAB and replace it with a new civilian body within the existing police regime or a new institutional framework.⁴²⁹ The report calls upon the GOB to take significant steps to put an end to the culture of torture and mistreatment by RAB and other security forces.⁴³⁰ It urges the GOB to ratify the Optional Protocol to the ICCPR and to repeal or amend Article 46 of the *Constitution* and repeal Section 197 of the CrPC.⁴³¹ The report demands that the GOB must take steps to ensure that the procedural rights for safeguarding a fair trial be enjoyed by the accused BDR members.⁴³²

The report proposes that the GOB should set up an outreach office from which members of the families of BDR soldiers would be apprised of their rights to pension, provident fund, and other entitlements.⁴³³ It urges the international community to ensure that the members of the security forces should be vetted adequately to make sure that anyone guilty of torture and mistreatment would be barred from serving in the UN peacekeeping missions or similar international exercises.⁴³⁴ It recommends that the donors and the international community exert their clout to influence the GOB to conduct investigation into alleged tortures during custody and monitor BDR trials to assess their compliance with fair trial standards.⁴³⁵

Comments:

As much as the expectation of justice among the families of the military officers who were ruthlessly killed during the mutiny has to be respected, the rights of the accused also

⁴²⁷ Ibid.

⁴²⁸ Ibid, at 53.

⁴²⁹ Ibid.

⁴³⁰ Ibid.

⁴³¹ Ibid, at 54.

⁴³² Ibid, at 54-55.

⁴³³ Ibid, at 55.

⁴³⁴ Ibid, at 56.

⁴³⁵ Ibid, at 55-56.

demand similar respect. The authorities must remember that two wrongs do not make a right. Beyond the concern of justice and the protection of the rights of the accused, the mutiny raises some very fundamental concerns about the operation of intelligence agencies and the overt or covert influence of the military on the GOB. The heavy clout of the military is apparent when the probe committee formed by the GOB itself accuses the security forces for non-cooperation while conducting its probe.⁴³⁶ The unsubstantiated speculations expressed in the report by the probe committee formed by the GOB and the self-contradictory claims made in the report by the military as pointed out in the report,⁴³⁷ are more akin to exercise in denial and self-fulfilment to justify their positions; than objective fact finding efforts. Hence, it is unlikely that they would yield any fruitful outcome. It may be said that in an era in which globally there is a visible push towards greater transparency, the full texts of these reports should have been made available to the public for their greater scrutiny. In any case, the efforts of the authorities to shroud them in secrecy went in vain, as the Human Rights Watch could get hold of them and made them available to the public.

Bibliographic Details:

Human Rights Watch, *“The Fear Never Leaves Me”: Custodial Deaths, Torture and Unfair Trials after the 2009 Bangladesh Rifles Mutiny* (2012) <<http://www.hrw.org/sites/default/files/reports/bangladesh0712ForUpload.pdf>> accessed 19 April 2015

⁴³⁶ Ibid, at 21.

⁴³⁷ Ibid, at 22-23.

MISCELLANEOUS

Title of the Study: Bangladesh: Criminal Justice through the Prism of Capital Punishment and the Fight Against Terrorism

Source of Funds: European Union

Implementing Body: International Federation for Human Rights and Odhikar

Duration of the Project: Not available

Key-words: Criminal justice, capital punishment, and terrorism

Summary of the Report:

This report, which is the outcome of a fact finding mission of International Federation for Human Rights (FIDH), undertakes an inquiry into capital punishment and the overall criminal justice system of Bangladesh. The findings of the report are based on interviews with human rights activists, academics, judges, lawyers, journalists, the NHRC, individuals who have been prosecuted under the Anti-Terrorism Act, and relatives of death row inmates. It commences with a brief outline of the evolution of the criminal justice system in Bangladesh. The report mentions some major human rights treaties which have been ratified by Bangladesh and notes that several requests for visits by Special Rapporteurs such as the *Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* and *Special Rapporteur on Independence of Judges and Lawyers* to Bangladesh have not been accepted by the GOB.⁴³⁸

The report enumerates the offences which are punishable by death and claims that far too many offences fall into this category and because of the economic and non-deadly character of some of those offences; Bangladesh is in violation of Article 6(2) of the ICCPR which demands that only the most serious crimes could be punishable by death. It notes that Bangladesh does not officially report on executions, but finds that in a district jail 90 prisoners out of around 2,400 prisoners were on death row.⁴³⁹ The report argues that the GOB needs to report on the number of death sentences pronounced and executed every year with detailed information on the convicts and the charges against them and expects that this reporting would pave the way for informed public debate on the issue of continuance of the death penalty as a mode of punishment.⁴⁴⁰

⁴³⁸ International Federation for Human Rights and Odhikar, *Bangladesh: Criminal Justice through the Prism of Capital Punishment and the Fight Against Terrorism* (2010) <https://www.fidh.org/IMG/pdf/Report_eng.pdf> accessed 25 April 2015, at 8.

⁴³⁹ Ibid, at 13.

⁴⁴⁰ Ibid, at 13-14.

The report discusses the well documented issues of excessive powers and abuse of such powers by the law enforcing agencies in case of arrest and custody of suspects. It notes that as criminal trials in Bangladesh can continue for months or even years, people accused of non-bailable offences may remain in prison for so long that it may effectively amount to pre-trial convictions.⁴⁴¹ The report finds that setting up speedy tribunals may be a way to redress the backlog of cases in the criminal justice system, but speedy trials through such tribunals may mean speed at the cost of procedural safeguards necessary for ensuring fair trials.⁴⁴² Furthermore, the allocation of cases to such tribunals is often motivated by political considerations.⁴⁴³ The report mentions that close ties between the police force and the magistracy can act as a barrier to a fair trial.⁴⁴⁴

The report welcomes the initiation of trial of heinous offences committed during the liberation war of Bangladesh but raises its concern about procedural aspects of the trial and the retention of capital punishment. The report argues that often death row convicts are exempted from execution by the exercise of the clemency prerogative of the President which may be tainted by political considerations. It points out that while criminal trials in Bangladesh can be very lengthy; politically high profile cases are often disposed of rather hurriedly compromising procedural fairness. The report also questions the transparency of the high profile BDR mutiny case. It argues that convicted prisoners should not be involved with the process of carrying out executions. According to the report, existing Bangladeshi laws are good enough to deal with terrorism related offences and the *Anti-Terrorism Act, 2009* (Act No. 16 of 2009) is nothing but the expression of a political desire to project a populist tough anti-terror stance.⁴⁴⁵

The report recommends that the provisions on immunity for public officials for committing torture (particularly Section 132 of the CrPC) be repealed and the power of the Parliament to grant indemnity to law enforcing agencies as enshrined in Article 46 of the *Constitution* be curtailed.⁴⁴⁶ It wants to see that the police would be trained in forensic science so that their reliance on investigation through the arrest of suspects and extraction of confessions can be reduced.⁴⁴⁷ The report calls upon the international community to come forward to assist the GOB in capacity building in this regard. The report recommends that there should be no provision for mandatory imposition of capital punishment for any

⁴⁴¹ Ibid, at 18.

⁴⁴² Ibid, at 20.

⁴⁴³ Ibid, at 20.

⁴⁴⁴ Ibid.

⁴⁴⁵ Ibid, at 33.

⁴⁴⁶ Ibid, at 39.

⁴⁴⁷ Ibid.

offence.⁴⁴⁸ It urges that the GOB should re-assess the need for continuance of the *Anti-Terrorism Act*, 2009 and suggests that if the law has to be in place, it must be modified in such a way that the offences under this Act are more specific and the length of police custody of suspects is reduced.⁴⁴⁹ The report wants that in authorisation of all cases of electronic surveillance and wire-tapping, there would be some form of judicial engagement.⁴⁵⁰ It mentions a number of international human rights treaties that it wants the GOB to ratify. One of the annexes to the report enlists leading reported cases on death penalty from 1987 to 2009.

Comments:

The report argues that since it may be difficult to find an official to physically carry out an execution, Bangladesh should abolish the death penalty.⁴⁵¹ While from a humanist point of view, abolishing the death penalty is desirable, it is difficult to understand how this lack or unwillingness of officials to physically perform executions may serve as one of the persuasive reasons for the abolishment of capital punishment. The report's concern about the provision for mandatory death sentence is valid as it is rightly pointed out that it takes away the judicial discretion for taking into account mitigating circumstances. However, it would have been helpful if the report could pin-point to the specific statutory provisions where this type of seemingly unconstitutional provisions still exist. The compulsory and universal public record keeping on capital sentences and executions may make sure that it is not just politically high profile executions that are subject to public scrutiny, but all executions are and as the report finds, in the course of time, this may open the door for informed public debate on the retention or abolishment of capital punishment.

As during its latest universal periodic review before the United Nations Human Rights Council, the GOB has pledged to “continue to cooperate with Special Procedures and mechanisms and consider extending invitations to Special Rapporteurs”,⁴⁵² it would be appropriate to expect that it would accept requests of Special Rapporteurs for visiting Bangladesh and thereby, prove its commitment to the protection of human rights. The report's recommendation on limiting the apparently unbridled scope for wiretapping under Section 97A of the *Telecommunications Regulation Act*, 2001 (Act No. 18 of 2001) is very important and should be a matter of priority for the GOB. Indeed, extensive electronic surveillance may be an unavoidable corollary of counter-terrorism intelligence strategy, but

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid, at 26.

⁴⁵² United Nations Human Rights Council: Working Group on the Universal Periodic Review Sixteenth session, 22 April–3 May 2013, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, Un Doc A/HRC/WG.6/16/BGD/1 (7 February 2013), at para 125.

unrestrained surveillance at the whims of the executive, is surely a grave threat to privacy and may be too high a price to be paid for security.

Bibliographic Details:

International Federation for Human Rights and Odhikar, *Bangladesh: Criminal Justice through the Prism of Capital Punishment and the Fight Against Terrorism* (2010)
<https://www.fidh.org/IMG/pdf/Report_eng.pdf> accessed 25 April 2015

Title of the Study: The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance

Source of Funds: Project on the Legal Compliance Study of the International Covenant on Civil and Political Rights conducted as part of UNDP's Bangladesh National Human Rights Capacity Development Project

Implementing Body: National Human Rights Commission

Duration of the Project: Not available

Key-words: ICCPR, civil and political rights, and reporting to treaty bodies

Summary of the Report:

This report is an endeavour to evaluate the compliance of Bangladesh with its obligations under the ICCPR. This assessment is carried out through a comparative assessment of the international legal norms and the existing national laws in Bangladesh. In view of the very extensive breadth of the ICCPR, the report adopts a selective approach and seeks to examine only some of the important rights enshrined in the Convention.⁴⁵³ The report includes an overview of the central provisions of the ICCPR which is followed by a similar overview on national legal provisions (both statutes and judicial precedents) providing for the protection of civil and political rights. At the outset, the report notes that the protection of civil and political rights in Bangladesh is legally guaranteed through the inclusion of these rights as fundamental rights in the Constitution, but there are laws in force in Bangladesh which are meant to serve parochial political interests undermining human rights norms and national laws.⁴⁵⁴

The report argues that the principle of non-discrimination as enshrined in the Constitution is more restricted in its scope than that of the ICCPR as the former does not include 'language' or 'place of birth' as unacceptable grounds of discrimination which the latter does.⁴⁵⁵ Similarly, while the ICCPR demands that immediately upon arrest, an arrested person be informed of the grounds of her/his arrest, the Constitution only requires that the arrested person be informed of the grounds as soon as may be possible which provides greater leeway to the members of law enforcing agencies and is prone to abuse.⁴⁵⁶ The report argues that the practical situation is even worse and would clearly fall short of both international and national legal standards.

⁴⁵³ Dr. Mohammad Shahabuddin, *The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance* (National Human Rights Commission, 2013) <<http://nhrc.org.bd/PDF/Study%20reports/Study%20Report%20ICCPR.pdf>> accessed 29 April 2015, at 21.

⁴⁵⁴ Ibid, at 20.

⁴⁵⁵ Ibid, at 48.

⁴⁵⁶ Ibid, at 52.

The report notes that between June 2004 and December 2010, around 1,500 persons were subjected to extra-judicial killings and in most of the cases, no systemic attempt to investigate the killings took place.⁴⁵⁷ The report notes that BDR personnel who have been detained in custody for the mutiny of 2009, have been subjected to torture and around 59 of them died in custody but the GOB's internal investigation claimed that only 2 of them died on account of torture.⁴⁵⁸ It also notes that incidents of killings of suspects by lynch mob (which can sometimes either directly or indirectly be instigated or tolerated by the police), is a matter of grave concern.⁴⁵⁹ The secret killings and unexplained disappearances of people is another matter of serious concern, the report notes.⁴⁶⁰

The report implies that the systemic and persistent increase of non-indigenous people in the hill tract districts and the issue of some of the indigenous languages being on the verge of extinction is a symbol of the dominance of Bengali people in the region pushing the indigenous people to the fringe.⁴⁶¹ The report laments the fact that important issues such as general administration, maintenance of law and order, education, cultural affairs, information and statistics, population control, and family planning etc. are outside the jurisdiction of the hill district councils and thus, retention of the true indigenous character of the region is very difficult.⁴⁶² It argues that the vehement denial of the GOB to recognise the indigenous people as 'indigenous' and its insistence on labelling them as the 'tribal minority' is bound to be disconcerting for this group of people.⁴⁶³

The report finds that in many cases, by using the provision of Section 144 of the CrPC or simply by use of force through the members of law enforcing agencies or activists of the ruling party, meetings and demonstrations are thwarted.⁴⁶⁴ While there is a constitutionally guaranteed freedom of association, by harassing or threatening the labour union activists, the employers or even members of government agencies can practically curtail the freedom of association, the report notes.⁴⁶⁵ It argues that because of their substantial reliance on governmental advertisements as a source of revenue, the newspapers are often prompted to self-censor their contents.⁴⁶⁶ The report finds that threats from the law enforcing agencies or

⁴⁵⁷ Ibid, at 59.

⁴⁵⁸ Ibid, at 62.

⁴⁵⁹ Ibid, at 62-63.

⁴⁶⁰ Ibid, at 64-66.

⁴⁶¹ Ibid, at 68-69.

⁴⁶² Ibid, at 73.

⁴⁶³ Ibid, at 76-77.

⁴⁶⁴ Ibid, at 79.

⁴⁶⁵ Ibid, at 80-81.

politicians from the ruling party, attack by political thugs, and contempt proceedings by courts undermine freedom of press.⁴⁶⁷

The report notes a discernible trend of threats and attacks on people from religious and ethnic minority groups.⁴⁶⁸ It claims that the focus on speedier disposal of court proceedings have mainly concentrated on civil cases and the backlog of cases in the administration of criminal justice regime remains overlooked.⁴⁶⁹ Since only cases which are deemed to be ‘sensational’ are sent to the speedy trial tribunals, there is a doubt about the constitutional validity of the statute on speedy trial of criminal cases, it notes.⁴⁷⁰ The report finds that a substantial portion of the limited amount of fund allocated for providing legal aid to those in need of assistance in accessing justice has remained unspent because of the bureaucratic procedure and tepid response from judges and lawyers.⁴⁷¹

The report surmises that if the capital punishment is abolished, people’s assumed tolerance to extra-judicial killings of even perceived hardened criminals would reduce.⁴⁷² Claiming the failure of capital punishment to act as a deterrent, the report urges the GOB to seriously consider the case for signing the Optional Protocol to the ICCPR.⁴⁷³ While the report does not indicate that anyone is subjected to discrimination on the grounds of adherence or non-adherence to any religion, it nonetheless recommends that the GOB should pass a law providing that none would be compelled to disclose adherence to any religion or belief.⁴⁷⁴ The report emphasises the need for a law which would ensure that the police force would have close connections with the community and having concrete mechanisms for accountability of the force.⁴⁷⁵ The report underscores the need for the capacity building of the relevant government agencies, judges, and lawyers for them to play greater role in upholding human rights and also on capacity building of government agencies and other stakeholders so

⁴⁶⁶ Ibid, at 81.

⁴⁶⁷ Ibid, at 81-84.

⁴⁶⁸ Ibid, at 84.

⁴⁶⁹ Ibid, at 89.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid, at 90.

⁴⁷² Ibid, at 92.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid, at 98.

⁴⁷⁵ Ibid, at 98-99, 103-104.

that they can participate more actively in the process of reporting on various human rights treaties.⁴⁷⁶

Comments:

Without taking a position on the abolishment of capital punishment, it may be said that the report's claim that capital punishment has failed to have any deterrent effect is unsubstantiated. Just because offences punishable with death are still committed, in itself it would not be enough to persuade on the futility of its deterring effect. The reason is that those who are in favour of the retention of capital punishment may quite plausibly argue that while the capital punishment may have failed to deter some, it may have had a deterrent effect on many others who may have refrained from committing those offences.

It is quite bewildering that in a country of limited financial resources, the public money allocated for ensuring access to justice, remains substantially unspent. Hence, the policy makers should thoroughly examine why the fund allocated for legal aid for economically vulnerable sections of the community remains unspent. If the report's emphasis on capacity building for ensuring inter alia that reporting to the various treaty bodies does take place, it may prove to be useful in raising the accountability of the GOB. Through reporting on the compliance of treaties, the GOB would be subjected to international scrutiny on its adherence to treaty obligations which may persuade it to take steps for greater protection of human rights. As long as the democratic values and ethos do not get entrenched in Bangladesh, such external scrutiny may play a crucial rule.

Bibliographic Details:

Shahabuddin, Dr. Mohammad, *The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance*, (National Human Rights Commission, 2013) <<http://nhrc.org.bd/PDF/Study%20reports/Study%20Report%20ICCPR.pdf>> accessed 29 April 2015

⁴⁷⁶ Ibid, at 102-103.

Title of the Study: The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance

Source of Funds: Not available

Implementing Body: National Human Rights Commission

Duration of the Project: Not available

Key-words: ICESCR, economic rights, social and cultural rights, reporting to treaty body

Summary of the Report:

This report is an endeavour to evaluate the compliance of Bangladesh with its international legal obligations under the ICESCR. Chapter one of the report narrates the basic provisions contained in the ICESCR. Chapter two of the report discusses the basic constitutional and statutory provisions and policy instruments relating to the rights enunciated in the ICESCR. A notable feature of chapter two is a discussion on the public interest litigations by various NGOs invoking the provisions of the *Constitution*. They include, for example, a writ petition filed by BLAST, seeking a direction from the HCD that the Ministry of Health of the GOB is obliged to implement the provisions of the *Prevention of Iodine Deficiency Disease Act*, 1989 (Act No. 10 of 1989) and the rules framed under it.⁴⁷⁷

The report notes that ignoring judgements by the HCD, the GOB has often evicted slum dwellers from their dwellings without sufficient notice and any adequate measure for resettlement.⁴⁷⁸ The report notes that public authorities vested with the responsibility of ensuring planned development and urbanisation of metropolitan cities have deviated somewhat from their direct mandate and have been engaged in allocating land for housing for the privileged class.⁴⁷⁹ The private housing companies' construction of buildings have been mired in deceptive commercial practice, forceful acquisition of land owned by vulnerable landowners, illegal encroachment on public land and violation of laws in carrying out their activities, the report notes.⁴⁸⁰ It finds that such activities are sometimes facilitated by the archaic and faulty land registration and land record regime.

On the issue of the 'right to water', pointing to the observations made by an independent expert appointed by the UN, the report notes that in the design, implementation,

⁴⁷⁷ S. M. Zakir Hossain,, *The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance* (National Human Rights Commission, 2012) <<http://www.nhrc.org.bd/PDF/Study%20reports/International%20Covenant%20on%20Economic,%20Social%20and%20Cultural%20Rights%20a%20study%20on%20Bangladesh%20Compliance.pdf>> accessed 29 April 2015, at 32.

⁴⁷⁸ Ibid, at 42.

⁴⁷⁹ Ibid, at 44.

⁴⁸⁰ Ibid, at 44-47.

and monitoring of efficacy of the policies and laws; public consultation is often non-existent.⁴⁸¹ The report recognises the GOB's efforts to raise people's awareness about the threats posed by arsenic contamination of water, but notes that lack of available alternatives may push many people to continue to drink arsenic-contaminated water.⁴⁸² Regarding the legal regime on the 'right to health', the study does not unearth any gap between the international and national legal regimes but notes that in practice, the under-achievement in health sector is inescapable.⁴⁸³ The report argues that the state of monitoring and evaluation of health service delivery is very dismal which is perhaps evident from the fact that there is no evidence that as a disciplinary measure, any medical practitioner's name has ever been struck off the registrar of practitioners.⁴⁸⁴

Severe under-staffing of doctors and nurses and an endemic culture of unauthorised absence from the hospitals is a grave problem severely impacting on the quality of service in public hospitals, the report notes.⁴⁸⁵ It also observes that the selling of drugs provided for 'free of cost distribution' to private pharmacies is a serious failure of the management of public hospitals. While official fees in public hospitals are quite low, the report finds that for receiving services, patients are often forced to pay unofficial fees.⁴⁸⁶ With regard to the 'right to work', the report observes that as the majority of unemployed and poor people live in rural areas or work in urban informal sectors where they do not enjoy decent remuneration, the GOB has to work for improving the scope for their productive employment with decent wage in those areas.⁴⁸⁷

The report finds that although the GOB has undertaken various social safety net programmes; many of the poor people remain out of the reach of these programmes and even more alarmingly, many of the actual beneficiaries of such programmes are not poor and just a fraction of the fund spent actually reach those who are in desperate need.⁴⁸⁸ It notes that while the tuition in public primary schools is free, other costs associated with primary education can deter many poor parents from sending their children to schools.⁴⁸⁹ The report recommends that for finding out the actual unemployment situation, the GOB should conduct

⁴⁸¹ Ibid, at 47-48.

⁴⁸² Ibid, at 49-50.

⁴⁸³ Ibid, at 50.

⁴⁸⁴ Ibid, at 51.

⁴⁸⁵ Ibid, at 52-55.

⁴⁸⁶ Ibid, at 56.

⁴⁸⁷ Ibid, at 62.

⁴⁸⁸ Ibid, at 63.

⁴⁸⁹ Ibid, at 65-66.

labour force survey on a regular basis. It wants a thorough review, revision, and harmonisation of existing land laws. It also wants that various agencies undertaking social safety net programmes would coordinate among themselves so as to avoid any overlap.

Comments:

The report's observation on the lack of public consultation in the policy and law making process epitomises something which is incompatible with the ethos of a modern democratic state and this must be addressed by policy makers. While micro-credit programmes and social-safety net programmes of NGOs in Bangladesh has been widely acclaimed for their role in eradication of poverty; the finding of the report that the poorest segment of the community has been out of their embrace is disappointing⁴⁹⁰ and probably warrants a detailed study on exploring the means for inclusion of the poorest into these programmes. The diversion of the limited money spent on public safety net programmes is also a serious issue and must be probed by the GOB. In a similar vein, the scope for reducing the non-tuition cost of education of school-going children should be explored, because education may play an important role in overall human development. For ensuring that the money spent delivers its desired services, the relevant laws and policies need to explore the ways for better management of overall public health service delivery apparatus.

Bibliographic Details:

Hossain, S. M. Zakir, *The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance* (National Human Rights Commission, 2012) <<http://www.nhrc.org.bd/PDF/Study%20reports/International%20Covenant%20on%20Economic,%20Social%20and%20Cultural%20Rights%20a%20study%20on%20Bangladesh%20Compliance.pdf>> accessed 29 April 2015

⁴⁹⁰ Ibid, at 64.

PERSONS WITH DISABILITIES

Title of the Study: Good Practice Report on Access to Justice for People with Disabilities in Bangladesh

Source of Funds: European Union as part of a project titled ‘Making it Work: Access to Justice for Persons with Disabilities in Bangladesh’

Implementing Body: Handicap International and Bangladesh Legal Aid and Services Trust

Duration of the Project: March 2013 - February 2015

Key-words: Persons with disabilities, and access to justice

Summary of the Report:

This report is an output of a project entitled ‘Making it Work: Access to Justice for Persons with Disabilities in Bangladesh’. It aims to make useful recommendations for ensuring greater access to legal services for persons with disabilities in the light of the provisions enshrined in the *Convention on the Rights of Persons with Disabilities, 2006 and Disabled Persons’ Rights and Protection Act, 2013* (Disability Rights Act).⁴⁹¹ The report argues that although constraint in resources and lack of concrete policy plans for ensuring access to justice for persons with disabilities is evident, in some cases due to the efforts by organisations for people with disabilities (OPDs), NGOs, individuals, police, media, and persons with disability or members of their family; these people could achieve access to justice.⁴⁹²

This report narrates different areas and types of good practices which have helped persons with disabilities to gain access to justice. These include dynamic role of the local police for ensuring access to justice of persons with disabilities, protection of women with disabilities in family related disputes through the use of ADR, synchronised action of OPDs and legal professionals for *pro bono* legal service of acid attack victims with disabilities, protection of inheritance rights of persons with disabilities through a concerted effort of OPDs and legal aid NGOs, ensuring justice for women with disabilities who are victims of sexual violence, access to justice for persons with disabilities through the support of District Legal Aid Committee, allowing persons with disabilities to participate in court proceedings, and protecting inheritance rights of women with disability. For instance, it narrates an incident in Mirpur police station of Kushtia district where the police takes a pro-active approach for the legal protection of persons with disabilities and has availed of the services of

⁴⁹¹ Act No. 39 of 2013.

⁴⁹² Handicap International and Bangladesh Legal Aid and Services Trust, *Good Practice Report on Access to Justice for People with Disabilities in Bangladesh* (2015), at 10-13.

a sign language interpreter in legal proceedings so as to ensure that a rape victim with hearing impairment can participate in the judicial proceedings.

The report urges the OPDs to persist with their efforts in identifying people with disabilities who may be in need of assistance for access to justice and give them peer support so that they are emboldened to seek protections offered by the formal legal regime. It argues that in order to perform this role, the capacity of the OPDs need to be reinforced in such a way that they are fully conversant with the justice regime and how the regime provides for protection of the rights of persons with disabilities. The report recommends that the members of the police force, judges, lawyers, and court officials etc. should receive pre-service training on disability rights. Pointing to clauses 5 and 12 of the schedule to the Disability Rights Act, the report reiterates that it is the responsibility of the GOB to put accessibility measures in place so that persons with disabilities are not deprived of their right to access to justice.

Comments:

While the incidents narrated in the report are possibly encouraging signs of achievements made in the realm of protection of rights of persons with disabilities, in a way they are also symptomatic of the sombre challenges that lie ahead. Considering that the incidents documented in the report are just incidents of vindication of the rights of persons with disabilities and for this to happen, often OPDs and lawyers had to resort to advocacy for convincing public officials for basic matters such as the court to accommodate for the presence of sign language interpreters or bear the cost of such accommodation - itself indicates challenges. Probably a functional regime on the protection of rights of persons with disabilities would have meant that the incidents discussed in the report are the norms, not 'good practices'. After all, these matters are statutory rights of persons with disabilities. While activism by the individuals with disability, OPDs and other non-state actors are welcome; this activism cannot be a substitute for the performance of the responsibility of GOB and public officials to perform their roles independent of any such external persuasion or intervention. Therefore, a study for making more effective implementation of the *Disability Rights Act* may be undertaken.

Bibliographic Details:

Handicap International and Bangladesh Legal Aid and Services Trust, *Good Practice Report on Access to Justice for People with Disabilities in Bangladesh* (2015)

POLICE

Title of the Study: Baseline Survey on Personal Security and Police Performance in Bangladesh

Source of Funds: Not applicable

Implementing Body: Safer-world, and Mitra and Associates for the United Nations Development Programme (UNDP) / Police Reform Programme (PRP) Phase II.

Duration of the Project: Not available

Key-words: Police, security sector reform, policy dialogue

Summary of the Report:

This report provides a baseline survey on personal security and police Performance in Bangladesh. Two surveys were conducted, which includes a public perception survey and a police perception survey, aiming to establish baseline information for the PRP by addressing issues of safety, security and justice in Bangladesh and incorporating a range of data sources.⁴⁹³ This report presents the key findings and analysis of the two surveys, supported by a desk review of relevant literature, including related research and official documents. In addition to establishing baseline information for the PRP, the aim of the report was also to ascertain perceptions of security and police performance as well as how these perceptions may have changed over the recent past, by drawing on other research in this field.⁴⁹⁴

In broad terms, concerns about law and order did not appear to feature highly on people's priorities, which tend to relate more to socio-economic issues. More significantly, it seems that most people and most police consider that law and order has improved over the last two years.⁴⁹⁵ However, data also suggests that most people feel crime affects their lives in some way and also remain afraid of being a victim of crime. Very few people thought that weak policing was to blame for criminality. A significant proportion (24.4 per cent) of public survey respondents said that they had been the victim of crime over the past two years, many of whom have been repeatedly victimised.⁴⁹⁶ The report, however, underscores the unreliability of official crime statistics and may not accurately reflect the true crime rate. While the public has a good level of confidence and trust in the police, which appears to be

⁴⁹³ Safer-world, and Mitra and Associates, *Baseline Survey on Personal Security and Police Performance in Bangladesh* (UNDP, 2011), at 2.

⁴⁹⁴ Ibid, at 2.

⁴⁹⁵ Ibid, at 25.

⁴⁹⁶ Ibid, at 4.

increasing, there appears to be an overwhelming recognition that the police require additional resources and further training.

The majority of the public perception survey respondents within the police considered the police to have the capacity to effectively combat community security problems. Almost half the respondents said that police performance could be improved with higher salaries and more incentives.⁴⁹⁷ Over three-quarters of police officers are also dissatisfied with their salaries and benefits.⁴⁹⁸ This level of dissatisfaction is compounded by the fact that working ‘overtime’ and working excessively long hours with no additional pay appears to be commonplace.

The study concludes by saying unless wider reform or development of the criminal justice system is undertaken, efforts undertaken by the police to help provide a fair and equitable justice for all and improve community safety, will be undermined.

Comments:

Overall, this seems to be a good effort at providing evidenced-based analysis. However, efforts of systematizing the accumulation of statistics can easily be done with a long term project like PRP as they are housed inside the Bangladesh Police Headquarters. Most reports are not presenting analysis of regular data from the police, the victim support units, police recruitment academies etc. Therefore, this perpetuates the ad hoc nature of reports which has to work based on small sampling sizes. In addition, tacit knowledge would probably suggest police complicity and/or interaction with political regimes, RAB etc. However, these do not seem to be adequately captured based on the sampling size and evidence provided.

Bibliographic Details:

Safer-world, and Mitra and Associates, *Baseline Survey on Personal Security and Police Performance in Bangladesh* (UNDP, 2011)
<<http://prp.org.bd/downloads/Baseline%20Survey%20on%20Personal%20Security%20and%20Police%20Performance%20in%20Bangladesh%20-Summary%20Report.pdf>> accessed 7 January 2015

⁴⁹⁷ Ibid, at 9.

⁴⁹⁸ Ibid, at 9.

PREVENTIVE DETENTION

Title of the Study: A Complete Report by the Law Commission on the Provisions Relating to Preventive Detention and Offences under the Special Powers Act, 1974

Source of Funds: Not applicable

Implementing Body: LCB

Duration of the Project: Not available

Key-words: Preventive detention, arbitrary detention, and the *Special Powers Act*, 1974

Summary of the Report:

This report is a study by the LCB upon a reference from the Ministry of Law, Justice and Parliamentary Affairs on the provisions of the *Special Powers Act*, 1974⁴⁹⁹ on preventive detention and offences under this Act. The report is based on a study of the judicial precedents on preventive detention beginning from the Pakistani colonial era till the publication of the report. It also summarises the opinions extracted from the six meetings that the LCB held in the capital and the five divisional headquarters with Judges, Magistrates, lawyers, academics, journalists, and members of law enforcing agencies and NGOs etc. Pointing to the language used by the Ministry in the reference to it, the report observes that as the GOB has taken a policy decision that preventive detention must be retained and only seeks to explore its ‘careful and effective’ application, the LCB refrains from taking on the question whether or not preventive detention should be abolished.⁵⁰⁰

Discussing the judicial precedents on preventive detention at length, the report finds that the judiciary has progressively taken a conscientious attitude on the use of executive’s discretion in exercising the powers of preventive detention and propounded various safeguards against its capricious use. For example, the precedents require that the threshold of satisfaction of the executive for preventively detaining a person is that it must be founded on objective assessments of the materials available against the detenu.⁵⁰¹ According to the report, if the detaining authority follows the statutory provisions and the principles laid down by the higher judiciary; there is little scope for abusing the legal provisions.⁵⁰² However,

⁴⁹⁹ Act No. XIV of 1974.

⁵⁰⁰ Law Commission of Bangladesh, *A Complete Report by the Law Commission on the Provisions Relating to Preventive Detention and Offences under the Special Powers Act, 1974* (Law Commission’s Report No. 43, 15 May 2002) <<http://lc.gov.bd/reports/43.pdf>> accessed 28 February 2015, at 5 [Throughout this summary the page numbers refer to the electronic file].

⁵⁰¹ Ibid, at 23.

⁵⁰² Ibid, at 25.

reviewing the cases of applications made against detention orders passed during 1998-2001, the report finds that in more than 90 per cent of the total cases; preventive detentions were found to be illegal by the courts.⁵⁰³ In many cases, the detained persons were released before the matters were disposed of by the courts and hence, the rules were discharged for being infructuous.⁵⁰⁴ Thus, the report states that in around 99 per cent of the total cases, the detention orders were passed improperly.⁵⁰⁵

It is alarming that the report notes that in some cases, even the civil servants acting as the detaining authority admitted during the workshops that due to the pressure exerted on them (presumably by the GOB) often they used to pass detention orders although they were aware that there was no convincing material justifying the order.⁵⁰⁶ Hence, it concludes that wrongful detention orders are the outcome of improper use of the law, not of any defect in the law.⁵⁰⁷ Thus, the report finds that as the malaise of preventive detentions are only in its unlawful application by the executive; it does not see the need for any legal reform except for suggesting the insertion of a proviso at the end of Section 3(3) of the *Special Powers Act*, 1974 in the following words:

Provided that an order made under sub-section (2) shall not be approved by the Government unless the Government is satisfied that the District Magistrate or the Additional District Magistrate, as the case may be, making the order had before him reasonable materials to satisfy himself that the detenu was likely to do a prejudicial act and that it was necessary to detain him with a view to preventing him from doing such prejudicial act.⁵⁰⁸

On the other point, referred to the LCB, the report finds that there is no necessity of including the offences under the *Special Powers Act*, 1974 in any other existing law or including them in any new law specifically drafted for this purpose.

Comments:

It is dismaying that even the minimum statutory reform, suggested by the report for inserting a little more safeguard against unlawful detention order has not taken place. Some of the suggestions mooted by the participants in the workshop arranged by the LCB may be worth pursuing after scrutiny in a much greater detail. They may include the suggestions such as the introduction of a statutory provision for compensation of victims of illegal detention or the imposition of some form of penalty on the gross abuse of power by the detaining

⁵⁰³ Ibid at 26. [

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

⁵⁰⁶ Ibid, at 27.

⁵⁰⁷ Ibid.

⁵⁰⁸ Ibid, at 28.

authority.⁵⁰⁹ It would also be interesting to observe whether there is any discernible change in the attitude of the executive over the years by extracting information from the Registrar of the SC on petitions made against preventive detention orders. Even merely a falling or rising number of petitions to the HCD for a judicial scrutiny of the use of the power of ordering preventive detention may be instructive. As pressure (mainly political) exerted on the detaining authority has been found to be the driving force behind the abuse and misuse of the power, how exertion of such pressure can be reduced, should also be examined.

Bibliographic Details:

Law Commission of Bangladesh, *A Complete Report by the Law Commission on the Provisions Relating to Preventive Detention and Offences under the Special Powers Act, 1974* (Law Commission's Report No. 43, 15 May 2002) <<http://lc.gov.bd/reports/43.pdf>> accessed 28 February 2015

⁵⁰⁹ Ibid, at 6.

PRISON ADMINISTRATION

Title of the Study: Development and Use of the Probation System in Bangladesh

Source of Funds: UK Aid

Implementing Body: Bangladesh Legal Aid and Services Trust and Penal Reform International

Duration of the Project: Not Available

Key-words: Prison reform, probation, and penal philosophy

Summary of the Report:

This study outlines the historical evolution of the probation system in Bangladesh since it found a place in the statute book through Section 562 (now stands repealed) of the *Code of Criminal Procedure*, 1898. It also mentions the international legal instruments relating to probation. The study contains a list of offences for which a convicted man cannot be released on probation. It enumerates the institutional arrangement for probation system in Bangladesh and the duties and qualifications for appointment as a probation officer. The study narrates the procedural details of granting an order for probation of a convicted person.

The study argues that among the prosecutors, defence lawyers, and judges, there is a lack of awareness about the legal provisions on probation. It notes that there are shortcomings in administrative and logistic capacity within the Department of Social Services, the responsible agency for administering the probation system in Bangladesh. The study reports that there are only 44 posts of probation officers for the whole country and in particular, there is an acute lack of female probation officers. Although the law allows all women to be released on probation except those who are convicted of committing an offence punishable with death,⁵¹⁰ the lack of female probation officers substantially limits the scope for women to be released on probation.⁵¹¹ Referring to the budgetary allocation of the probation services in Jessore District, the study argues that most of the allotted money is spent for administrative costs such as the salaries of officials and maintenance of office.⁵¹²

⁵¹⁰ *The Probation of Offenders Ordinance*, 1960, Section 5(1)(b).

⁵¹¹ This happens due to the legal restrictions that female convicts cannot be supervised by male probation officers; see *The Probation of Offenders Rules*, 1971, Rule 11(3).

⁵¹² Bangladesh Legal Aid and Services Trust and Penal Reform International, *Development and Use of the Probation System in Bangladesh* (2013), at 50.

Due to lack of capacity, the probation officers are inclined to concentrate more on administrative tasks than on supervising the probationers.⁵¹³ The report makes an interesting point that as the legal regime provides for a distinct system for probation of children in conflict with the law, a distinct regime for probation officers for children with training in child behaviour or psychology should be devised.⁵¹⁴ While recommending the promotion of the probation system as a means for reducing pressure on the overcrowded prisons, hardship of the family and recidivism, the study cautions that due to excessive politicisation and corruption within the administration, inadequate administrative arrangements for monitoring probationers pose the risk of abuse of the mechanism.⁵¹⁵ The study concludes with recommendations for some legislative and administrative reforms.

Comments:

The study claims that the public, prosecution, and courts in Bangladesh do not have faith in non-custodial penal interventions such as probation but this observation has not been backed up by any methodical analysis.⁵¹⁶ The study asserts that the retribution and deterrence continues to be the dominant penal philosophy in the sentencing practice in Bangladesh.⁵¹⁷ The disproportionately low number of probations granted in comparison with the large number of prisoners, may lend support to the assertion. However, this is at odds with the following observation of the High Court Division of the Supreme Court of Bangladesh “[T]he penal system of Bangladesh is essentially reformatory in character as opposed to retributive. The *Probation of Offenders Ordinance* is a prime example of such a policy.”⁵¹⁸ Thus, whether or not the low number of probations granted is driven by a value-laden sentencing philosophy or a lack of adequate probation mechanism seems to be an open question.

The study asserts that lack of coordination among different agencies in administering probation is evident,⁵¹⁹ but there is scanty detail about it and this may be the subject of a separate study. It also cites the number of probations granted during 2008 to 2011 and purports that the meagre numbers are indicative of the government’s unwillingness to promote probation as a penal intervention.⁵²⁰ However, the finding has its constraints as in

⁵¹³ Ibid, at 52.

⁵¹⁴ Ibid, at 53.

⁵¹⁵ Ibid, at 56.

⁵¹⁶ Ibid, at 39.

⁵¹⁷ Ibid.

⁵¹⁸ *Abdul Khaleque v Hazera Begum and Another* (2006) 58 DLR (HCD) 322, quoted in *ibid*, at 21.

⁵¹⁹ Ibid, at 38.

⁵²⁰ Ibid, at 35, 39.

order to visualise the full picture, the number of probations granted has to be judged against the number of applications made for probations. Again, as the power to grant probation to convicts lies with the courts, it is not clear to what extent the number of probation applications accepted is indicative of the government's commitment or otherwise.

Bibliographic Details:

Bangladesh Legal Aid and Services Trust and Penal Reform International, *Development and Use of the Probation System in Bangladesh* (2013)
<<http://www.blast.org.bd/content/report/PRI-BLAST-Probation-report-13-03-2014.pdf>>
accessed 23 December 2014

Title of the Study: Under-aged Prison Inmates in Bangladesh: A Sample Situation of Youthful Offenders in Greater Dhaka

Source of Funds: Action Aid Bangladesh

Implementing Body: Retired Police Officers Welfare Association Bangladesh and Action Aid

Duration of the Project: Not available

Key-words: Prison, children, and juvenile delinquency

Summary of the Report:

Through a baseline survey conducted in Dhaka and adjacent districts, this report assesses the situation of children in conflict with the law and makes some recommendations for the improvement of the existing situation. Chapter 2 of the report presents an overview of the genesis of juvenile justice regime and the main legal instruments of national and international law in the realm of juvenile justice. Chapter 3 of the report presents an overview of the prison administration regime in Bangladesh. Chapter 4 presents a socio-economic and demographic profile of children in conflict with the law in terms of age group, religious affiliation, educational qualification, family size, occupation of children, occupation of parents, conjugal relation between parents, and total family income etc. Chapter 5 of the report presents data on the charges for which children have been put into prison or correctional centres, the duration of their stay in the prison or rehabilitation centre, and the frequency of court hearings on juvenile cases etc.

Chapter 6 of the report presents data on the various problematic features prevalent in the family of the juvenile inmates, opinion of these children about the reasons for them coming into conflict with the laws, the living condition in prisons and correctional centres, and the facilities made available to children in the prison/correctional centres. Chapters 7 and 8 document the opinion elicited from the children and the authorities of prison and correctional centres about the prevalent regime and the scope for its improvement. Referring to reported and unreported judicial precedents, Chapter 9 presents a trend of heartrending incidents of adolescents being caught up in the criminal justice regime and undergoing trial in clear defiance to statutory laws.

The report argues that the children are often denied the procedural legal safeguards as police simply show falsely increased age and treat them as adults.⁵²¹ It notes that this is facilitated by lack of formal documentary evidence of age; and expects that upon introduction of mandatory birth certificates; the room for this slipshod attitude would be reduced. The report advocates for implementation of the recommendations made by the report of the

⁵²¹ Retired Police Officers Welfare Association Bangladesh and Action Aid, *Under-aged Prison Inmates in Bangladesh: A Sample Situation of Youthful Offenders in Greater Dhaka* (2008) <<http://www.infokosh.gov.bd/download-attachment/889/706>> accessed 3 May 2015, at 59.

Bangladesh Jails Reforms Commission of 1980.⁵²² The report recommends that at least in case of petty allegations, children should be dealt only through non-custodial means of intervention.⁵²³ As the GOB's resources are limited, it sees a significant scope for NGOs to invest in improving and broadening the welfare programmes for rehabilitation of children in conflict with the law, but notes that there is a need for greater coordination in the existing initiatives of the various NGOs. It wants to see a more concerted effort of the police, probation officers, and NGOs so that the legal proceedings before the juvenile courts are disposed of promptly.⁵²⁴

The report wants that juveniles would not be perceived as violators of law but as members of the society in conflict with the law and recommends that children should be removed from the parental supervision only as the last resort.⁵²⁵ It recommends that in large metropolitan cities, distinct police unit staffed by specially trained personnel may be formed.⁵²⁶ The report demands that the judicial records involving children must be handled with utmost care for privacy and should never be used as records in subsequent judicial proceedings involving adults.⁵²⁷ The report finds that the resort to probation as a means for handling children in conflict with the law is rare and suggests that there is much scope for greater resort to it.⁵²⁸

Comments:

Although the finding of the report that children from low income families are more prone to indulge in criminal activities,⁵²⁹ may conform to the popular perception of a positive correlation between poverty and crimes, it may be argued that the conclusion is not as simple as is implied in the report. It is not improbable that children from the economically privileged section of the community have received better legal representation and thus, have escaped the criminal justice regime or at least have not been incarcerated. In the same light, the number of offences reported may give a better picture, as children of economically privileged families in most cases may not even be charged or investigated, to begin with. Hence, it may be argued that for drawing a stronger correlation between poverty and juvenile delinquency, a better

⁵²² Ibid, at 23.

⁵²³ Ibid, at 60.

⁵²⁴ Ibid.

⁵²⁵ Ibid, at 61.

⁵²⁶ Ibid, at 61.

⁵²⁷ Ibid, at 62.

⁵²⁸ Ibid, at 62.

⁵²⁹ Ibid, at 34, 37.

yardstick would be the number of criminal cases filed or criminal incidents reported to authorities who are committed by children.

It is also quite possible that children from low income families are over-represented in the criminal cases or detained as inmates, simply because the total number of children in lower income families is much more than the total number of children in economically well off families. Having said this, the data presented in the report may have set the grounds for conducting more in-depth empirical studies on the various questions sought to be addressed by it.⁵³⁰ The report's assertion that there is a pressing need for cooperation among NGOs working for the betterment of children in conflict with the law, would have been valuable if the report included some detailed account of their activities and identified any overlaps in them. In a similar manner, the framework for the claimed need for a concerted effort of the police, probation officers, and NGOs for prompt disposal of proceedings before juvenile courts warrants more research.

Bibliographic Details:

Retired Police Officers Welfare Association Bangladesh and Action Aid, *Under-aged Prison Inmates in Bangladesh: A Sample Situation of Youthful Offenders in Greater Dhaka* (2008) <<http://www.infokosh.gov.bd/download-attachment/889/706>> accessed 3 May 2015

⁵³⁰ Ibid, at 62.

REFUGEES AND UNDOCUMENTED FOREIGNERS

Title of the Study: Analyzing the Legislative Gaps in the Detention Scheme of the Foreigners in Bangladesh: The Released Prisoners

Source of Funds: Not available

Implementing Body: National Human Rights Commission of Bangladesh

Duration of the Project: Not available

Key-words: Foreign prisoners, detention, and released prisoners

Summary of the Report:

This report, commissioned by the NHRC deals with a very unfortunate plight of those foreign prisoners who are in detention even after serving their respective prison terms and are known as released prisoners detained in prison – clearly a paradox. It assesses the relevant legislative framework and their application in practice by the executive and the judiciary. According to the report, the laws on foreigners in Bangladesh are immigration-centric and they give wide latitude to the judiciary and executive in the interpretation and application of these laws. It finds that these laws owe their genesis, to either the colonial era or to the partition of the Indian subcontinent when entry of undocumented persons from the neighbouring countries or their unauthorised overstay was a common concern.⁵³¹ These laws and their application by the executive is so harsh that sometimes a foreigner losing valid travel documents and reporting that loss to the police, gets arrested and detained for not having in possession of a valid travel document, the report notes.⁵³² The report finds that in many cases, the executive fails to draw a distinction between persecuted foreigners in need of protection and illegal entrants.

The report notes that at the end of 2012, there were 108 foreigners detained as released prisoners.⁵³³ It finds that there is no law or established uniform procedure for release of prisoners who are foreign nationals, but the common practice is that when their term of imprisonment is over, prison administrators inform the Ministry of Foreign Affairs (MOFA) via the Ministry of Home Affairs (MOHA). The MOFA then contacts the respective foreign mission for receiving its national and if the mission comes forward, the released prisoner is handed over to it. The report claims that this process is time consuming and sometimes

⁵³¹ Arpeeta Shams Mizan, *Analyzing the Legislative Gaps in the Detention Scheme of the Foreigners in Bangladesh: The Released Prisoners* (National Human Rights Commission, 2014), <<http://www.nhrc.org.bd/PDF/Study%20reports/The%20Released%20Prisoner.pdf>> accessed 21 April 2015, at 11-12.

⁵³² Ibid, at 13.

⁵³³ Ibid, at 20.

information on the status of the released prisoner may get lost in the course of this administrative process.⁵³⁴

The report notes that jail authorities have blamed the unwillingness and laches of concerned missions for the sufferings of the released prisoners. In the case of Rohingyas from Myanmar, the situation is even worse as the authorities in Myanmar do not recognise Rohingyas as citizens. The report cites the decision of the HCD in *Faustina Pereira v State*, and argues that non-cooperation of the foreign mission cannot justify the continued detention of a foreign national in prison.⁵³⁵ Moreover, referring to the *Jail Code*, the report argues that the only valid ground for detaining a person in prison after serving the sentence; is a grave illness that may harm the released person or the society.⁵³⁶

The report rightly argues that once a foreigner is arrested and detained and then released after serving the term, it is incumbent on the prison administration to hand in the foreigner to the embassy of their respective countries. Thus, there is no valid reason for a foreigner to be in breach of the prohibition of overstay and be subjected to further incarceration simply because she/he cannot be repatriated. The report raises a grave concern that depending on their country of origin, the foreigners often receive different treatments from members of the executive and the lower judiciary, which it seeks to exemplify through the disparate treatments received by the citizens of India and Myanmar.⁵³⁷

The report explores some options for putting an end to the sufferings of released prisoners. It suggests that upon release from the prison, a foreigner may be granted with a sort of identity card which may serve as a certificate for their unimpeded travel to the border.⁵³⁸ Noting that there are some public interest litigations filed by NGOs pending before the HCD, it suggests that judicial activism may be useful. It also reports that the GOB is considering an overhaul of the existing litany of laws and replacing them with only two laws.⁵³⁹ It suggests that one of the proposed laws would draw a clear distinction between a stateless person and a citizen of a foreign country and thereby, eliminate the hardship faced by the stateless persons.⁵⁴⁰

⁵³⁴ Ibid.

⁵³⁵ Ibid, at 21 referring to *Faustina Pereira v State* (2001) 53 DLR (HCD) 414, at page 416.

⁵³⁶ Ibid, at 22 referring to Rule 102 of the *Jail Code*.

⁵³⁷ Ibid, at 32-33.

⁵³⁸ Ibid, at 35.

⁵³⁹ Ibid, at 36.

⁵⁴⁰ Ibid, at 37.

Comments:

The report claims that “In the field of protection, a significant development has been the newly passed Suppression and Prevention of Human Trafficking Act 2012. The Act has specific provision prohibiting the penalization of victims of trafficking on the ground of violating any other laws of Bangladesh for the time being [in place].”⁵⁴¹ The report does not pin-point to any specific provision in the Act providing for such a blanket exemption for victims of human trafficking, but presumably it alludes to Section 37(1) of the Act which states that “[a]ny person or agency dealing with the subject-matter of this Act shall endeavour to ensure that any victim of the offence of human trafficking is not subjected to conviction or punishment under this Act or any other existing law.” However, it must also be noted that Section 4(5) of the same Act provides that “[t]his Act shall be complementary to other existing laws concerning emigration and immigration and shall not be used in derogation to the same”, and hence, it seems that victims of human trafficking may be subjected to prosecution for violation of laws on emigration and immigration. Thus, if these two provisions are read together, we can appreciate that while the law enforcing officials have been urged to protect the victims of human trafficking from being prosecuted for violation of laws, it may be an overstatement to conclude that the Act unequivocally prohibits the penalization of victims of trafficking for violating any other laws of Bangladesh.

The suggestion of the report that upon release from the prison, a foreigner may be granted with a sort of identity card appears to be of limited value because even if such a document is recognised by the local authorities in Bangladesh; should these persons get intercepted by the border guards of their country of origin who may not be willing to accept them, such a card would be of no use. A noticeable feature from the profile of released prisoners of the report is that they all are from neighbouring or economically backward African countries. This may not be a coincidence and may imply that lack of diplomatic efforts by the respective countries is at play. Hence, while the reform of laws on treatment of illegal entrants to Bangladesh would help, the prison authorities should also follow the recommendation made by the HCD in *Faustina Pereira v State* that at least three months prior to the release of prisoners who are foreign nationals; steps must be taken to ensure that upon serving their term, they would not be detained in prison.

When it is evident from the decision of the HCD in the same case that the GOB did not communicate with the Embassy of Tanzania for release of Tanzanian citizens on the plea that Tanzania had no embassy in Bangladesh, it would appear that there is lack of diligence on the part of the relevant officials of the GOB. The order of the HCD in *Faustina Pereira v State* that the 28 foreign prisoners (regarding whose languishing in jail even after serving their term was the subject matter of the writ petition) must be provided with shelter by the MOHA, should also apply to those current and future foreigners who are not repatriated because of inaction of their country of origin. The GOB, of course, can forge a partnership with human rights bodies for the necessary funding required for any such assistance.

⁵⁴¹ Ibid.

Bibliographic Details:

Mizan, Arpeeta Shams, *Analyzing the Legislative Gaps in the Detention Scheme of the Foreigners in Bangladesh: The Released Prisoners* (National Human Rights Commission, 2014) <<http://www.nhrc.org.bd/PDF/Study%20reports/The%20Released%20Prisoner.pdf>> accessed 21 April 2015

Title of the Study: Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees

Source of Funds: United Nations High Commissioner for Refugees

Implementing Body: United Nations High Commissioner for Refugees

Duration of the Project: Unknown

Key-words: Refugees, Rohingya, statelessness, and Myanmar

Summary of the Report:

Relying on the statistical and sector-specific reports prepared by the UNHCR and its partner agencies and engagements with Rohingya refugees in various participatory methods such as focus group discussions; this report assesses the situation of Rohingya refugees in Bangladesh. At the time of writing of the report, there were around 26,000 Rohingya refugees living in the camps for refugees and of them more than half were children aged below 18 years.⁵⁴² It notes that this figure is double the figure reported in just a decade and a half ago and it speaks of a propensity of high birth rate among the Rohingyas.⁵⁴³ This report notes that the Rohingyas who entered Bangladesh since 1992 are not recognised as refugees by the GOB.⁵⁴⁴ It claims that outside the camps, there were around 100,000 to 200,000 refugees (legally recognised or not) who may fall into various categories (even seasonal workers or economic migrants) but at the root of their exodus from Myanmar, there is repression by the state in one form or the other.⁵⁴⁵

According to the report, the national legal regime on refugee affairs in Bangladesh may rather be marked by its absence of any explicit reference to refugees. Bangladesh has not acceded to the *Convention Relating to the Status of Refugees*, 1951 but it does not follow any general policy of *refoulement* (*refoulement* means expelling foreign entrants who have the legal right to be recognised as refugees) and those who are detained by border guards are more often than not released though generally upon making illegal or informal payments.⁵⁴⁶ Refugees seeking asylum sometimes can apply through BLAST, a national human rights NGO to the UNHCR for the determination of their legal status.⁵⁴⁷

⁵⁴² United Nations High Commissioner for Refugees, *Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees* (2007) <<http://www.unhcr.org/46fa1af32.pdf>> accessed 28 February 2015, at 12.

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid.

⁵⁴⁶ Ibid, at 16.

⁵⁴⁷ Ibid.

The report finds that being deprived of the opportunity to work legally or even simply to legally move beyond the peripheries of the camps, the Rohingyas are forced to engage in illegal activities or work in exploitative conditions.⁵⁴⁸ For engaging in work without lawful permission, they can be prosecuted, but it notes that in practice they are not.⁵⁴⁹ The situation for women is direr as they are less capable of engaging in earning stealthily, the report suggests.⁵⁵⁰ According to the report, the arbitrary arrests and detentions of Rohingyas are quite common and sometimes these may take place for no legal reason, but only as a means for coercion for settling monetary disputes or for removing a male member of a family from home so that the female member may be sexually exploited more easily.⁵⁵¹ It notes that the children born after 1992 or born of parents who themselves are unregistered lack any legal recognition and thus, are deprived of food ration and ancillary facilities but notes that the GOB has agreed to register them.⁵⁵² The report devotes a section on the various essential services provided to the Rohingyas by the UNHCR and its partner agencies and the constraints these services face.

In many cases, with the help of criminal gangs, Rohingyas (mostly those living outside refugee camps) have moved to third countries, the report notes. While some of them may have succeeded in settling in the third country; many others have been abused by the people smuggling gangs or have been left with no help when they have been detained by officials of transiting or destination countries.⁵⁵³ The report observes that in view of its own perennial challenges regarding human development and poverty; the position of the GOB is entirely voluntary repatriation centric and does not want to accept any prospect of local integration. The report too concedes that voluntary repatriation would be the optimal sustainable solution, but in the prevailing circumstances in Myanmar and the trend of returned migration to Bangladesh, it rules that out as a viable solution.

The report notes that a core challenge to the resolution of the problem lies in Myanmar's perception and branding of Rohingyas as non-citizens and illegal migrants from Bangladesh which make them stateless. The report mentions that since 2006, a programme for resettlement of extremely helpless refugees has been pursued, but at the time of writing of the report, fewer than 100 refugees have been accepted by Canada and New Zealand on the

⁵⁴⁸ Ibid, at 17-18.34.

⁵⁴⁹ Ibid, at 34.

⁵⁵⁰ Ibid, at 18. 34.

⁵⁵¹ Ibid, at 20.

⁵⁵² Ibid, at 21-22.

⁵⁵³ Ibid, at 14.

basis of their vulnerability and potential for local integration.⁵⁵⁴ The government of the UK has also expressed its interest but has refrained from making any specific bid.⁵⁵⁵

Comments:

The report has recognised that occurrence of sexual and gender based violence in the camps for Rohingya refugees is common place and to prevent it, a more accountable administration of the justice system is necessary.⁵⁵⁶ In fact, a GOB initiated reform was supposed to be undertaken in 2007 to ensure a reform of the overall administration of justice in the camps. To what extent the proposed reform has been undertaken and whether or not it has succeeded in engendering positive changes may worth a review. As the prospect of any major voluntary repatriation to Myanmar or resettlement to third countries is not prominent, the already launched self-reliance oriented programmes such as the food for work initiative should be widened in its scope so that the refugees' reliance on aid is reduced and they can eventually make some contributions to Bangladesh. In a similar vein, the suggestion of the report that in order to increase the appeal of refugees as prospective candidates for resettlement to third countries, the GOB's assistance in increasing access of refugees to education and training for employment; merits serious consideration. However, given the inherent limitations of Bangladesh in terms of resources, it would appear that sustained support of donors would be a pre-requisite for any meaningful impact of such programmes.

Bibliographic Details:

United Nations High Commissioner for Refugees, *Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees* (2007) <<http://www.unhcr.org/46fa1af32.pdf>> accessed 28 February 2015

⁵⁵⁴ Ibid, at 38.

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid, at 20-21.

Title of the Study: Living Like Prisoner: Documenting the Experiences of Crime and Insecurity of Bihari Community in Bangladesh

Source of Funds: Not available

Implementing Body: Research Evaluation Division, BRAC

Duration of the Project: May 2007 to December 2007

Key-words: Biharis, citizenship, and stranded Pakistanis in Bangladesh

Summary of the Report:

This report highlights the socio-economic and political suffering of Biharis or stranded Pakistanis (as they are often referred to) in Bangladesh. According to the report, there were around 300,000 Biharis living in Bangladesh.⁵⁵⁷ The field survey for this report was carried on by visiting Bihari camps in Dhaka, Syedpur, Khulna, and Rangpur and interviewing people residing therein. Referring to the UNDP's *Human Development Report 1994*, the report points to seven specific facets of human security, namely: economic, food, health, environmental, personal, community, and political and argues that Biharis stranded in Bangladesh are deprived in all of these facets. The camps in which they live do not have adequate supply of drinking water or proper sanitation which often causes the spreading of contagious and water-borne diseases.⁵⁵⁸

Many NGOs working in the Bihari camps provide them with micro-credit facilities, but often due to lack of opportunities for income generating activities; such facilities fail to yield the desired result of self-reliance of their recipients.⁵⁵⁹ And even worse, it may at times increase their vulnerability and tension. Most Biharis are engaged in menial jobs like masonry, rickshaw pulling, as sweeper, as barbers etc.⁵⁶⁰ The report observes that lack of opportunities for employment drives many Biharis to get involved in illegal activities for subsistence. Being deprived of fair price for their products and facing extortionist activities of local thugs and politically influential persons; some Bihari families had given up their handloom businesses.⁵⁶¹ Biharis are regularly extorted or forced to pay bribes for no reason other than simply being Biharis, the report finds. When they try to protest against these illegal

⁵⁵⁷ Ashrafuzzaman Khan, and Mrinmoy Samadder, *Living Like Prisoner: Documenting the Experiences of Crime and Insecurity of Bihari Community in Bangladesh* (Research Evaluation Division, BRAC, 2007) <http://research.brac.net/reports/Bihari_Community.pdf> accessed 18 January 2015, at 4.

⁵⁵⁸ Ibid, at 7, 9.

⁵⁵⁹ Ibid, at 7.

⁵⁶⁰ Ibid.

⁵⁶¹ Ibid.

activities, they are harassed more and get arrested on false accusations or face forceful closure of their small shops thus threatening their livelihood.⁵⁶²

Often when any member of the Bihari community gets embroiled in any tussle with Bengalis; because of the inaction of local elite and local administration, the Biharis end up suffering more from the violence that ensues. The report notes that Bihari children face discrimination and get ridiculed at educational institutions for their failure to use Bengali language properly.⁵⁶³ They are scolded for speaking in their mother language on board the public buses. Due to their concerns of safety, many women in camps confine themselves to the vicinity of camps which deprive them of education and employment.⁵⁶⁴ Even Bihari children are stigmatised as Pakistan *dalals* (collaborators) and other children often refuse to play with them.⁵⁶⁵

The report states that in order to show off their political parties' popularity, local leaders often force Biharis to participate in political processions and meetings. During elections, they are even also forced to cast fake votes. There is a divergence of opinion between the old generation of Biharis and their younger generation in that while most of the former group want to repatriate to Pakistan, most of the latter group want to be treated as citizens of Bangladesh.⁵⁶⁶

The report notes that a judgement of the HCD rendered in 2003 has ordered the GOB to grant Biharis Bangladeshi citizenship, but notes that in practice the court's order is often not followed. However, HCD's ruling in this case was limited to the status of the petitioners of the case. In a subsequent ruling, the HCD provided that all Biharis in Bangladesh who are residents here, had the right to Bangladeshi citizenship unless they call or treat themselves as Stranded Pakistanis "by affirming and acknowledging either expressly or by conduct allegiance to a foreign state" or "have renounced their citizenship and / or [are] waiting to leave for Pakistan."⁵⁶⁷

Comments:

The report does a good job in discussing the various problems confronted by Biharis in Bangladesh but it refrains from presenting any solutions to the problems identified. The scope for taking up programmes by the national and international humanitarian agencies for

⁵⁶² Ibid.at 8.

⁵⁶³ Ibid, at 9.

⁵⁶⁴ Ibid, at 10-11..

⁵⁶⁵ Ibid, at 7.

⁵⁶⁶ Ibid, at 12-13.

⁵⁶⁷ *Md. Sadaqat Khan (Fakku) and others v. Chief Election Commissioner, Bangladesh Election Commission*, Writ Petition No. 10129 of 2007.

integration of Biharis with the rest of the community and empowering them through education and income generating activities may be studied. In view of the time elapsed since the independence of Bangladesh the repatriation of Biharis or their settlement in a willing third country may be a very difficult proposition, but nonetheless the scope for such measures may be studied as some Biharis would apparently prefer such an option.

Bibliographic Details:

Khan, Ashrafuzzaman and Samadder, Mrinmoy, *Living Like Prisoner: Documenting the Experiences of Crime and Insecurity of Bihari Community in Bangladesh* (Research Evaluation Division, BRAC, 2007) <http://research.brac.net/reports/Bihari_Community.pdf> accessed 18 January 2015

Title of the Study: States of Denial: A Review of UNHCR's Response to the Protracted Situation of Statelessness of Rohingya Refugees in Bangladesh

Source of Funds: Not Applicable

Implementing Body: United Nations High Commissioner for Refugees

Duration of the Project: Not applicable

Key-words: Refugees, statelessness, Rohingya, and Myanmar

Summary of the Report:

This report assesses the situation of Rohingya refugees in Bangladesh and the effective implementation of a 'Special Initiative on Protracted Refugee Situations' launched in 2008 in some countries of which this group is one. It mentions that since the emergence of Bangladesh, there have been two significant influxes of refugees from Myanmar to Bangladesh, one in 1978 and the other in 1991-1992 and in both occasions, many of those who came to Bangladesh were repatriated often somewhat involuntarily. It notes that at the time of writing, there were around 29,000 recognised Rohingya refugees and around 36,000 unrecognised Rohingya refugees who lived in temporary shelters to which the UNHCR and other humanitarian organisations had limited access.⁵⁶⁸ There were also around 200,000 undocumented Rohingyas who lived within the host communities in Bangladesh and were regarded as undocumented migrants by the GOB but were still considered to be of concern to the UNHCR.⁵⁶⁹

The report is based on information obtained by the author of the report by visiting makeshift places of living of the refugees and interviewing stakeholders which include the UNHCR staff members, registered and unregistered refugees, members of host communities, government officials, heads of UN agencies, national and international NGOs, and academics. The report notes that while the political parties generally profess tough refugee and asylum policies; because of their affinities with the host communities in terms of social, ethnic, and particularly religious beliefs, some people in these latter communities harbour sympathetic attitude towards Rohingyas.⁵⁷⁰ Having said that, the public opinion in Bangladesh is not generally very receptive towards refugees particularly because they are generally perceived to compete with locals for jobs and resources, it concludes. For example,

⁵⁶⁸ Esther Kiragu, Angela Li Rosi, and Tim Morris, *States of Denial: A Review of UNHCR's Response to the Protracted Situation of Statelessness of Rohingya Refugees in Bangladesh* (United Nations High Commissioner for Refugees, 2011) <<http://www.unhcr.org/4ee754c19.pdf>> accessed 21 January 2015, at 1, 8.

⁵⁶⁹ Ibid, at 5, 11.

⁵⁷⁰ Ibid, at 5, 8.

Rohingyas get entangled in disputes with local communities regarding use or collection of basic resources such as collection of firewood.⁵⁷¹

Major problems confronted by Rohingyas in the camps include wife-beating or abandonment of wife, rape, early and non-consensual marriage, child labour and trafficking, detention on allegation of illegal presence, extortion, and exploitation.⁵⁷² Although those Rohingya refugees who have photo identity cards issued by the UNHCR enjoy some sort of protection, as the cards are officially not endorsed by the GOB, they can still be detained for illegal presence.⁵⁷³ The report notes that although since 2009, the national law permits the registration of refugee children with a Bangladeshi father or mother; they are de facto denied the opportunity to register.⁵⁷⁴

The report accepts that as a country confronting the problems of a very high growth rate of population and extreme poverty, Bangladesh is ill equipped to deal with protracted refugee situations. The report chronicles the various programmes that UNHCR has taken up in Bangladesh regarding the protection of Rohingyas. The report observes that the GOB is of the view that the international community has not done enough to force Myanmar to put an end to the factors that push Rohingyas to flee Myanmar. Similarly, the GOB considers that the international community does not provide enough support nor even recognises the adverse impacts of the influx of refugees on the host communities.

The report considers a number of solutions to put an end to the troubles faced by Rohingyas. The report notes that there is some positive changes to the national political milieu in Myanmar and suggests that the UNHCR should monitor the developments in Myanmar and update Rohingyas about such developments but concedes that it remains to be seen if the changes are sustained enough and whether or not that would have a bearing on the status and living conditions of Rohingyas. The report notes that from 2006 to 2010, UNHCR had been able to resettle 920 out of 1,997 persons whose cases were submitted for resettlement to a third country and suggests that this option of resettlement should be explored.⁵⁷⁵

The report notes that in view of an enduring presence of the various agencies of the UN system in Bangladesh and the value that Bangladesh gives to its engagement in peacekeeping missions; there is a scope for greater engagement of the UN system with the GOB on this issue of protection of Rohingya refugees.⁵⁷⁶ It also identifies a number of

⁵⁷¹ Ibid, at 9.

⁵⁷² Ibid, at 13.

⁵⁷³ Ibid, at 14.

⁵⁷⁴ Ibid.

⁵⁷⁵ Ibid, at 21.

⁵⁷⁶ Ibid, at 25.

regional mechanisms such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Association of South East Asian Nations Commission on Human Rights and the Commission on Women and Children with whom UNDP could forge a partnership for increased engagement with the authorities in Myanmar.⁵⁷⁷

Comments:

The report notes that the discourse on refugees in Bangladesh is generally dictated by the major political parties and the voices of vibrant civil society groups are largely absent in the policy discourse on the Rohingya refugee issue in Bangladesh.⁵⁷⁸ Hence, an organisation like the UNHCR which works for the refugees, may try to mobilise these groups to have a greater say in bringing about sustainable solutions to the sufferings of Rohingya refugees, it argues. It also very rightly notes that the issue of influx of Rohingya refugees is not confined to Bangladesh and Myanmar but affects many other countries within the Asia-Pacific region such as Australia, India, Indonesia, Malaysia, Thailand, and countries in the Middle East where Rohingyas are forced to take refuge. It argues that all these countries and because of China and India's clout over the authorities in Myanmar; should come forward to exert pressure on authorities in Myanmar to act in a way which would ensure that Rohingyas in Myanmar are not forced to flee their home and seek refuge abroad.

Bibliographic Details:

Kiragu, Esther, Angela Li Rosi, and Tim Morris, *States of Denial: A Review of UNHCR's Response to the Protracted Situation of Statelessness of Rohingya Refugees in Bangladesh* (United Nations High Commissioner for Refugees, 2011) <<http://www.unhcr.org/4ee754c19.pdf>> accessed 21 January 2015

⁵⁷⁷ Ibid, at 25-26.

⁵⁷⁸ Ibid, at 2, 25.

RELIGIOUS MINORITIES

Title of the Study: Gains of Few and Loss of the Nation

Source of Funds: MISEREOR

Implementing Body: Uttaran

Duration of the Project: Not available

Key-words: Violence, religious minority, and ethnic minority

Summary of the Report:

This report examines the root causes of violence perpetrated against people belonging to minority communities in south-western districts of Khulna, Jessore, and Satkhira with particular emphasis on the events in 2013 and in the aftermath of the disputed parliamentary election on 5th January 2014 and makes some suggestions to avoid their repetition. It finds that among various minority groups, Hindus tend to suffer the most. The report finds that on the eve of the parliamentary election in 2014, the people of these communities were trapped in a political tussle in which members of the ruling party coerced them to vote and members of the major opposition political party led alliance coerced them to refrain from voting. According to the report, votes, land, and ideological viewpoints of secular and Islamist parties are the principal factors that fuels violence and deprivation of the minority communities by political thugs.

Referring to some incidents of violent attacks from 2002 to 2008 on people belonging to minority communities, the report argues that violence against them is not a new phenomenon. It notes that often systemic spreading of rumour and propaganda has been used by organised groups as a prelude to their violent attacks. It finds that while verdicts rendered by the International Crimes Tribunal of Bangladesh ignited violence against the minority people perpetrated by the followers of the convicted political leaders, in some cases, the activists of Bangladesh Awami League, the ruling political party, were also engaged in such violence.⁵⁷⁹ The report argues that often violence is perpetrated to force people to perpetually leave their homes so that their lands then can be grabbed.

The violence (including sexual violence), vandalism, and arson attacks were so severe that many people were forced to flee their homes and take refuge in Dhaka and other parts of Bangladesh or neighbouring West Bengal state of India.⁵⁸⁰ According to the report, even many Hindu temples were vandalised.⁵⁸¹ The report finds that in the aftermath of violent attacks,

⁵⁷⁹ Dr. Ferdous Jahan and Muhammad Ashikur Rahman, *Gains of Few and Loss of the Nation*, (Uttaran, 2014) <<http://www.uttaran.net/publications/gains%20of%20few%20&%20loss%20of%20the%20nations.pdf>> accessed 12 February 2015, Ibid, at 6-7, 23-26.

⁵⁸⁰ Ibid, at 15-16.

⁵⁸¹ Ibid, at 12, 13, 18.24.

generally people with means migrate and those who are economically extremely vulnerable tend to stay, making them suffer even more in subsequent string of attacks.⁵⁸² The report notes that some extreme religious groups even obstruct cultural programmes of minority communities on the basis of a perception that such programmes may undermine the religion of the former.⁵⁸³

The report notes that civil society, NGOs, some political leaders and diplomats strongly protested about these incidents but the GOB's response was slow, inadequate, and heavy-handed, and indiscriminately targeted both perpetrators and innocent members of the public.⁵⁸⁴ Referring to the Chief of a Judicial Probe Commission which investigated similar incidents occurring in the aftermath of the 2001 parliamentary election, the report notes that none of the recommendations made by that Commission to avert post-election violence has been followed by the authorities.⁵⁸⁵ Similarly, it depicts a damning role often played by a section of the media who may be rumour-mongering or publishing motivated reports with contradictory factual details on identical events.⁵⁸⁶

The report suggests that a law entitled 'Bangladesh Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Act' should be passed with a provision for speedy trial by special tribunals.⁵⁸⁷ It also refers to a suggestion by Bangladesh Hindu-Buddha-Christian Oikya Parishad (BHBCOP) that in cases of violence against people from minority communities, the local Member of Parliament must be held accountable. It also wants that the GOB forms a national minority commission for upholding the interests of people belonging to minority groups and implements the recommendations of the Judicial Commission which was formed to investigate the incidents of post-election violence in 2001. The report also endorses the suggestion of BHBCOP, of forming a separate ministry on minority issues. Where any investigation finds that credible evidence exists against any perpetrator, they must be prosecuted; the report recommends. It also recommends that in every violence-prone upazilla, a committee consisting of elected representatives, government officials, and local elites should hold periodic meetings and take immediate actions on any report of violence or attempt at violence.

Comments:

It may be an interesting issue for researchers that more than 17 per cent of the population in the region covered by the report, profess the Hindu religion⁵⁸⁸ which is almost double the

⁵⁸² Ibid, at 16.

⁵⁸³ Ibid, at 29.

⁵⁸⁴ Ibid, at 17-20.

⁵⁸⁵ Ibid, at 19.

⁵⁸⁶ Ibid, at 22.

⁵⁸⁷ Ibid, at 30.

⁵⁸⁸ Ibid, at 29.

national average of Hindu population (around 9.7 per cent);⁵⁸⁹ numerically speaking they are much less a minority in this region than the rest of Bangladesh. While the researchers' claim that land in this region is very scarce maybe true,⁵⁹⁰ in a densely populated country like Bangladesh the same would also hold for the rest of Bangladesh. Thus, some other less violence against minority-prone areas of Bangladesh may be studied to explore numerical ascendancy apart, what factors are at play in prompting violence against minority communities. While local MPs would have a moral legal or moral role in acting to prevent violence against or exploitation of minority groups, it seems untenable that without any overt or covert action by an MP or her/his affiliates, she/he can be held accountable. It may be worth examining a suggestion of the report that a separate commission on minority issues be set up. It is an open question to analyse whether this would ensure better outcome or promote more bureaucracy. The comparative advantages and disadvantages of such a Commission vis-à-vis the NHRC may also be studied.

Bibliographic Details:

Jahan, Dr. Ferdous and Muhammad Ashikur Rahman, *Gains of Few and Loss of the Nation* (Uttaran, 2014)
<<http://www.uttaran.net/publications/gains%20of%20few%20&%20loss%20of%20the%20nation.pdf>> accessed 12 February 2015

⁵⁸⁹ Ibid, at 27.

⁵⁹⁰ Ibid, at 25-28.

SOCIALLY MARGINALISED SECTIONS OF THE POPULATION

Title of the Study: *Onogrosor Nagorikgoner Odhikar Surokhkha, Soman Sujog O Purno Ongshidaritto Nishchitokoroner Lokhkhe Boishommo Bilop Ain Prononoyon Bishoye Ain Commissioner Suparish* (Some Recommendations of the Law Commission for Enactment of Laws for Ensuring Protection of Rights, Equal Opportunity and Full Participation of Marginalised Citizens)

Source of Funds: Not available

Implementing Body: Law Commission of Bangladesh

Duration of the Project: Not available

Key-words: Marginalised population, equal opportunity, discrimination, and law reform

Summary of the Report:

This report underscores the importance of the enactment of a law for the protection of the rights of the marginalised section of the community, broadly known as *dalit* or outcaste and who face discrimination due to diverse social, religious, professional, or customary practices. According to the report, there are about 7 million such people in Bangladesh.⁵⁹¹ These people who are engaged in menial works are looked down upon by the rest of the community and deprived of adequate opportunities of education, health care, and other basic necessities; are forced to live in shackles of poverty and despair. They are often forced to work for inadequate salaries and without enjoying leave facilities. They fail to get any realistic chance of moving up the social ladder, the report finds. In terms of social rights and customs, it notes that these people are often prevented from enjoying even very basic public utilities.

The report notes that the constitutionally guaranteed fundamental rights on non-discrimination and equal treatment are limited in the sense that they are directly enforceable only against the state and does not directly bind individuals or private organisations. Furthermore, the report argues that the *Constitution* only perceives religion, colour, caste, sex, and place of birth as the factors for discrimination; but that there are many other factors fuelling discriminatory treatment of segments of the community. It claims that while in the *Constitution*, there is a prohibition on discrimination on the basis of religion, colour, caste, sex, or place of birth; since there is no specific law against discrimination with functional

⁵⁹¹ Law Commission of Bangladesh, *Onogrosor Nagorikgoner Odhikar Surokhkha, Soman Sujog O Purno Ongshidaritto Nishchitokoroner Lokhkhe Boishommo Bilop Ain Prononoyon Bishoye Ain Commissioner Suparish* (Some Recommendations of the Law Commission for Enactment of Laws for Ensuring Protection of Rights, Equal Opportunity and Full Participation of Marginalised Citizens) (Law Commission's Report No. 127, 29 April 2014) <<http://lc.gov.bd/reports/126-BB%20Act%202014%20Concept%20Paper.pdf>> accessed 15 March 2015, at 1.

details as to how to punish such acts or conducts, an aggrieved person from a marginalised section of the community may face hurdles in seeking legal redress for the contravention of the constitutional right of non-discrimination.⁵⁹² For solving this, the report suggests that a legal framework which would identify the causes and nature of the discriminations faced by marginalised sections of the community and provide measures to be taken by the GOB and individuals against any such discrimination, is vital.

The report cites the laws in force in neighbouring Asian countries as well as in other parts of the globe which deal with the actions or conducts curtailing the rights of marginalised sections of citizens. In a similar vein, it suggests that a draft law entitled 'Elimination of Discrimination Act,' should be adopted by the Parliament. The draft law envisages that complaints of discrimination may be lodged either to the NHRC or directly to the courts and such complaints would be investigated by either of the bodies where the complaint has been filed. The report expects that this approach would mean that the police would not be overburdened with investigative duties. The draft law envisages that offences punishable under it would be tried by the court of the DJ or the Additional District Judge. The report does not fail to make out that statutory legal mechanism is just one of the possible ways to improve the lot of marginalised people and recognising this, the draft law envisages the need for measures beyond laws. It wants to see that the NHRC would undertake necessary programmes for uplifting the position of marginalised sections of the community so that they are brought into the mainstream community. The report notes that vesting such functions in the NHRC rather than a new public body would avert delays and administrative complexities.

Comments:

The draft law proposed by the Commission should be a good beginning in the battle against the various deep-rooted discriminatory treatments of marginalised sections of the community. Therefore, it is expected that the Parliament would consider the text of the draft law crafted by the Commission and would pass a long overdue law in this regard. However, it should be mentioned that the report and its charted draft law have their limitations. This is because, the report draws a fairly broad picture of the various sorts of discrimination faced by people in various marginalised sections of the community, but does not separately consider the case of any individual segment of them. Obviously, as the report acknowledges, the challenges and discriminations faced by the various types of marginalised people are different,⁵⁹³ but it does not consider how this diversity in them would necessitate different types of responses to protect them. Hence, apparently this is an area where separate studies with sole emphasis on each segment of the marginalised population may direct targeted legislative endeavours. Another important issue which warrants further studies is how and through what type of programmes, the NHRC can bridge the gap between the people in marginalised sections and the rest of the community.

⁵⁹² Ibid, at 2.

⁵⁹³ Ibid, at 6.

Bibliographic Details:

Law Commission of Bangladesh, *Onogrosor Nagorikgoner Odhikar Surokhkha, Soman Sujog O Purno Ongshidaritto Nishchitokoroner Lokhkhe Boishommo Bilop Ain Prononoyon Bishoye Ain Commissioner Suparish* (Some Recommendations of the Law Commission for Enactment of Laws for Ensuring Protection of Rights, Equal Opportunity and Full Participation of Marginalised Citizens) (Law Commission's Report No. 127, 29 April 2014) <<http://lc.gov.bd/reports/126-BB%20Act%202014%20Concept%20Paper.pdf>> accessed 15 March 2015

SUPPORT TO WITNESSES AND VICTIMS OF CRIMES

Title of the Study: A Final Report on a Proposed Law Relating to Compensation and Other Relief to the Crime Victims

Source of Funds: Not applicable

Implementing Body: Bangladesh Law Commission

Duration of the Project: Not available

Key-words: Victim of crimes, crimes, and administration of justice

Summary of the Report:

This report makes a case for providing monetary compensation and other similar reliefs to the victims of crimes. Laws in modern society prosecute most of the crimes not just for rendering justice to the victim of the offence but as offences are generally treated as a threat to a peaceful and orderly society; the offenders are also prosecuted by the state for the sake of maintenance of law and order in the society. Hence, in the pursuit for justice for the sake of society, the more direct victims of offences are sometimes ignored by modern machinery for administering justice. When an offender is punished through imprisonment, the victim of the offence or if she/he is dead; her/his near ones may feel that justice has been delivered to them. But as this report by the Law Commission suggests, such feeling of achieving justice can at best give mental solace and such mental feeling as important and necessary it may be; cannot compensate for the financial challenges that the victim of crime or the members of the family of the victims may face. For this reason, the report recommends that a specific legislation providing for the mechanism for providing economic relief to the victims of crimes be drafted.

The report notes that similar victim protection funds are operational in many economically developed states. It suggests that the necessary fund for compensating the victims would be coming from contributions by the Government, fines realised from convicted offenders, any amount of the forfeited bail bonds, penalties, and donations from individuals or organisations. The schedule to the suggested draft law appended to the report mentions 15 categories of victims of grave offences of which they or their relatives who would be allowed to be considered for payment of compensation.

Comments:

The report of the Law Commission leaves some critical issues either almost unaddressed or addressed with scanty regard to details. For instance, it assumes that the fund for supporting the victims of crime would be allocated among the various classes of eligible victims or their eligible relatives. But in practice, availability of limited fund in proportion to the number of applicants may often force applications for funds to be prioritised on the basis of various criteria and in the report there is a conspicuous lack of any such criteria. The report

envisages that the fund would operate in every district. From the viewpoint of a viable management, it may be a better idea to have a nation-wide fund in which a much larger pool of money can be accumulated and better managed. Again the draft law annexed to the report envisages a victim support committee in each district consisting of members who would be Judges of various ranks in the lower judiciary.⁵⁹⁴ When it is a generally agreed fact that courts in Bangladesh are already facing a huge backlog of cases; it is questionable that whether encumbering judges with such a duty which is essentially an administrative function would be wise.

The value of the report probably lies in the fact that it may serve as a preparatory point for discussion on a long overdue issue. This report, being a recommendation to the Government for enactment of a law, the omissions or inadequate concern to functional challenges are understandable, but if a meaningfully operational mechanism for the protection of victims of crimes have to be devised, then issues discussed above and other challenges to implementation need to be addressed through a rigorous research.

Bibliographic Details:

Law Commission of Bangladesh, *A Final Report on a Proposed Law Relating to Compensation and Other Relief to the Crime Victims* (Law Commission's Report No. 75, 15 February 2007), <<http://www.lc.gov.bd/reports/75.pdf>> accessed 9 January 2015

⁵⁹⁴ Law Commission of Bangladesh, *A Final Report on a Proposed Law Relating to Compensation and Other Relief to the Crime Victim* (Law Commission's Report No. 75, 15 December 2007), <<http://www.lc.gov.bd/reports/75.pdf>> accessed 9 January 2015, Section 6 of the Draft Bill.

Title of the Study: *Gurutor Oporadhe Khotigrosto Bakti (Victim) O Sakhkhi Surokhkhar Prostabit Ainer Shortabolir Bishoyok Ain Commisssoner Protibedon* (A Report of the Law Commission on Recommendations on the Proposed Law Relating to Protection of Victim of Grave Offences and Witnesses)

Source of Funds: Not applicable

Implementing Body: Law Commission of Bangladesh

Duration of the Project: Not available

Key-words: Victim of crimes, witness, crimes, and administration of justice

Summary of the Report:

This report underscores the need for a victim and witness protection law in Bangladesh. The report notes that in the existing criminal law, there is no provision for protection of victims and witnesses. This absence makes it easy to exert threats on them which force some witnesses to remain absent or become hostile witnesses⁵⁹⁵ during the trial process. Or even worse, the victim of a crime may not lodge a complaint with the law enforcing bodies regarding the commission of the offence due to the aforementioned reasons, which would generally mean that the crime remains unreported. The report finds that except for some protections limited to imposing some restrictions on asking insulting, aggressive, or distasteful questions to witnesses; in Bangladesh there is no law for the protection of the witnesses during trial. It also finds that a number of countries such as Australia, Brazil, Canada, Colombia, Germany, Ireland, Italy, New Zealand, Thailand, the United Kingdom, and the United States of America etc. have specific laws or policies for the protection of victims and witnesses. It also notes that some international legal provisions also enshrine this concept of the need for the protection of victims and witnesses. While upon petition by the witness or victim, Judges sporadically pass orders for taking measures for the safety of a specific victim or witness, this issue has generally been neglected in Bangladesh, the report notes.

Apart from threats, the report argues that in the adversarial trial system, witnesses often suffer because of frequent adjournments of criminal proceedings. It mentions that in rape or sexual harassment cases, the victim or witnesses are asked such questions which amount to mental torture and thus, witnesses are often discouraged to give evidence. The report wants to see that a national policy and plan of action for protection of victims and witnesses would be adopted. It suggests that the plan of action would be implemented by a national committee headed by the Ministry of Law where representatives from the Ministry of Home Affairs, Ministry of Social Welfare, Ministry of Women and Children, Attorney General's Office, Police Force, and National Human Rights Commission would also be

⁵⁹⁵ In legal parlance, a hostile witness means a witness who supports the case of the party opposite to by whom she/he was summoned as a witness.

present. The report recommends that the protection measures would be implemented by a protection office initially in metropolitan towns and eventually in every district town.

The report fixes some conditions on the basis of which the application for protection would be assessed. The most important among these conditions are that the application for protection must be related to an offence punishable with death or imprisonment of at least 7 years and the applicant must be an important witness for trial of the offence. The report provides a list of rights which the applicant for protection may enjoy. It mentions that trafficked women and children and witness to or victims of international crimes i.e. genocide, crimes against humanity, war crimes, crime against peace have special needs which must be considered by the state. The report recommends that victims of crimes be compensated from the penalty imposed on the convicted person and a state operated fund too.

The report recommends special measures for protection of women and children victims or witnesses. Such suggestions include the provision for camera trial, shading their face through the use of modern technologies, and recording their evidence through video conferencing. It wants to prohibit putting such a question to a woman or child that may amount to torture. In special cases, instead of cross examination by the opposite party's lawyer, the same question/s may be put by the Judge or instead of an oral statement, a written statement may be recorded, the report suggests.

Comments:

If the Government passes a law taking into account the recommendations made in the report that should provide a much deserved relief to witnesses to and victims of crimes. It should also encourage victims to seek justice and witnesses to give a proper version of the events relating to the offence which should mean that criminals would not be able to get away by intimidating victims and witnesses. Some of the measures for protecting the victims and witnesses would need substantial investment of money but the report does not provide any detail as to how the fund for the measures suggested in it would be obtained. The report proposes that some provisions of the *Evidence Act*, 1872⁵⁹⁶ may be revised but does not make any specific suggestion whatsoever.⁵⁹⁷ The report claims that it aims to address the weaknesses and lacking in the Law Commission's Draft Bill of 2006⁵⁹⁸ but it does not discuss what those shortcomings of that Bill were and how they have been addressed.

⁵⁹⁶ Act No. I of 1872.

⁵⁹⁷ Law Commission of Bangladesh, *Gurutor Oporadhe Khotigrosto Bakti (Victim) O Sakhkhi Surokhkhar Prostabit Ainer Shortabolir Bishoyok Ain Commisssoner Protibedon (A Report of the Law Commission on Recommendations on the Proposed Law Relating to Protection of Victim of Grave Offences and Witnesses)* (Law Commission's Report No. 108, 9 February 2011) <<http://www.lc.gov.bd/reports/108-Victim.pdf>> accessed 9 January 2015, at 6.

⁵⁹⁸ Ibid, at 3.

Bibliographic Details:

Law Commission of Bangladesh, *Gurutor Oporadhe Khotigrosto Bakti (Victim) O Sakhkhi Surokhkhar Prostabit Ainer Shortabolir Bishoyok Ain Commisisoner Protibedon (A Report of the Law Commission on Recommendations on the Proposed Law Relating to Protection of Victim of Grave Offences and Witnesses)* (Law Commission's Report No. 108, 9 February 2011) <<http://www.lc.gov.bd/reports/108-Victim.pdf>> accessed 9 January 2015

TORTURE

Title of the Study: Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh

Source of Funds: Bangladesh National Human Rights Commission – Capacity Development Project of United Nations Development Programme

Implementing Body: National Human Rights Commission

Duration of the Project: Not available

Key-words: Arrest, detention, and torture

Summary of the Report:

This report is focused on the discussion of some landmark decisions of the HCD of the SC of Bangladesh relating to arrest, detention, and torture. It also briefly notes the basic national legal provisions on arrest, detention, and torture and the relevant international legal instruments which have been ratified by Bangladesh. The report also devotes a distinct part on judicial decisions specifically dealing with arbitrary arrest, detention, and torture of women and children. According to the report, the prevalence of arbitrary arrest, detention, and custodial torture has been a perennial problem in the administration of the criminal justice system in Bangladesh irrespective of the forms of government prevalent at various points in time.⁵⁹⁹ In other words, the report seems to allude to the fact that the record of democratically elected governments has not been any better than that of the martial law governments usurping power. Some of the decisions discussed in the report contain specific directions to the GOB for making specific changes to the law so that the abuse of power against suspected offenders can be curbed.

The judicial decisions covered by this report reveal that it is not just members of the law enforcing agencies, but also Magistrates who have, on occasions, not followed the legal provisions in recording confessions and thus, the accused have been denied the legally recognised safeguards designed for the prevention of recording of involuntary confessions.⁶⁰⁰ The report demands that the directives issued by the HCD in the judgements discussed in it are implemented. It calls upon the GOB to repeal all legal provisions which may give impunity to members of law enforcing agencies for committing any kind of torture.⁶⁰¹ It also

⁵⁹⁹ Dr. Abdullah Al Faruque, *Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh* (National Human Rights Commission, 2013) <<http://www.nhrc.org.bd/PDF/Study%20reports/Arrest%20and%20Detention.pdf>> accessed 4 March 2015, at 19.

⁶⁰⁰ Ibid, at 34-35.

⁶⁰¹ Ibid, at 52.

suggests that the law enforcing agencies should be introduced to modern techniques of investigation, interrogation and equipped with better forensic tools which may reduce their over-reliance on the extraction of confession as a tool for investigation into offences.

The report wants to see that any police officer responsible for arbitrary arrest, detention, or torture be punished as other citizens would be. It urges the GOB to ensure that access to detainees, particularly during custodial interrogation be enhanced. The report contends that lack of knowledge and sensitivity about human rights and the relevant legal provisions is one of the major factors contributing to the violation of human rights.⁶⁰² To remedy this, it suggests that human rights knowledge should be imparted to the members of law enforcing agencies.⁶⁰³

Comments:

Some of the decisions discussed in the report epitomise a worrying trend that although several years (sometimes more than a decade) have passed since the pronouncement of judgements by the HCD, such important cases with significant bearing on the life and liberty of citizens were and are still waiting to be decided by the AD. The benefit of a study of the factors behind such unusual delay in the disposal of this type of cases of public importance cannot be overstated. While there would be some value in imparting human rights knowledge to the members of law enforcing agencies, it is uncertain as to what extent the diagnosis of the report that “lack of knowledge of human rights and relevant legal safeguards on arbitrary arrest and torture among law enforcement agencies remains one of the major causes of violation of human rights” would factually hold. If one agrees with this diagnosis, then with the growing awareness of human rights and Bangladesh’s ratification of more and more human rights instruments, the abuse of human rights by members of the law enforcing agencies should have subsided which does not appear to be the case.

It is difficult to appreciate the basis for the finding of the report that the eleven directives rendered by the HCD in *Saifuzzamman v State and Others*, ‘are not binding on the relevant authorities’.⁶⁰⁴ It is possible that the author of the report may have made the observation in the light of the fact that the GOB’s appeal against the judgement is pending but as the same would apply to at least one more decision discussed in the report; it would seem that the finding is not made on this ground. In any case, in view of the unequivocal wordings used by the HCD in this case, it would clearly appear that the HCD intended its directions to be nothing less than binding:

The requirement Nos. (i), (ii), (iii), (iv), (v) and (vi) be forwarded to the Secretary, Ministry of

⁶⁰² Ibid.

⁶⁰³ Ibid.

⁶⁰⁴ Ibid, at 40 referring to the HCD’s decision in *Saifuzzamman v State and Others* (2004), 56 DLR (HCD) 324 [Saifuzzamman].

Home Affairs and it shall be his obligation to circulate and get the same notified to every police station for compliance within 3 months from date. The requirements No. (v), (vii), (viii), (ix), (x) and (xi) be forwarded to all Chief Metropolitan Magistrates and District Magistrates and it shall be their obligation to circulate the same to every Metropolitan Magistrate and the Magistrates who are authorised to take cognisance of offence for compliance within 3 (three) months from date. The Registrar, Supreme Court of Bangladesh is directed to circulate the requirements as per direction made above...If the police officers and the Magistrates fail to comply with above requirements, within the prescribed time as fixed herein, they would be rendered liable to be punished for contempt of Court, if any application is made by the aggrieved person in this Court.⁶⁰⁵

Bibliographic Details:

Faruque, Dr. Abdullah Al, *Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh* (National Human Rights Commission, 2013) <<http://www.nhrc.org.bd/PDF/Study%20reports/Arrest%20and%20Detention.pdf>> accessed 4 March 2015

⁶⁰⁵ Ibid, *Saifuzzaman* at para 57.

Title of the Study: The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Study on Bangladesh Compliance

Source of Funds: Project on the Legal Compliance Study of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment conducted by the UNDP – Bangladesh National Human Rights Capacity Development Project

Implementing Body: National Human Rights Commission

Duration of the Project: Not available

Key-words: Arrest, detention, torture, cruel treatment, and inhuman or degrading treatment or punishment

Summary of the Report:

This report seeks to evaluate the effectiveness of the legal framework of protection against torture and other cruel, inhuman or degrading treatment or punishment in Bangladesh. This evaluation is conducted on the basis of a comparative assessment of the international legal norms and the existing national laws in Bangladesh. The report includes an overview of the basic provisions of the *Convention against Torture*. The report finds that though the existing laws (at the time of the writing of the report), did not have a precise definition of torture, there was no dearth of laws with proscription on and punishment for conducts which would tantamount to torture.⁶⁰⁶ However, the report observes that these provisions fall short of conforming to the international legal standard as enshrined in the *Convention against Torture*.⁶⁰⁷ The reasons behind such a gap between national laws and international standards are multiple and according to the report, they include: (a) in some cases, the punishment for the offence does not match its gravity, (b) some acts would fall outside the ambit of the offence when they are perpetrated during a legally authorised custody, and (c) the definition of offences in some cases is too narrow, that is some of the actions which would amount to torture under the *Convention against Torture*, are not punishable under the national law.⁶⁰⁸

To exemplify the various forms of torture in Bangladesh, the report cites a few incidents reported in newspapers, a report of the United States Department of State, and national and international NGOs. The report laments that colonial laws owing its genesis to the design of defending the colonial rulers, still continues to be in force in independent Bangladesh.⁶⁰⁹ It argues that an unholy alliance has been forged between the political parties

⁶⁰⁶ Dr. Mohammad Shahabuddin, *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Study on Bangladesh Compliance* (National Human Rights Commission, 2013) <<http://www.nhrc.org.bd/PDF/Study%20reports/Study%20report%20CAT.pdf>> accessed 5 March 2015, at 28-36.

⁶⁰⁷ Ibid, at 37.

⁶⁰⁸ Ibid, at 37-41.

⁶⁰⁹ Ibid, at 41.

and members of the law enforcing agencies in which the members of law enforcing agencies can act with impunity as the political governments tend to use them for securing political gains.⁶¹⁰ The report mentions a draft Police Ordinance of 2007 which was ultimately abandoned.⁶¹¹ Citing some of its proposed features (in particular, the setting up of an independent body to investigate allegations of abuse of power or violation of human rights), the report implies that the proposed law could have ushered in a new era in establishing accountability of public servants through the mechanism of non-departmental, independent investigations.⁶¹² The report notes that the state practice in Bangladesh flouts both national and international legal standards.

The report surmises that once a specific law on torture would be enacted; there would be positive outcomes. It also provides some broad guidelines on how such a law should embody the principles codified in the *Convention against Torture*. The report points out that in order to comply with the requirements of the Convention, the GOB has to initiate legal measures for proscription, punishment, and prevention of torture not just in the context of law enforcing agencies but also in all contexts of custody and control; for instance, in prison, hospitals, in the sphere of care of children, the elderly, and persons with physical or mental disability etc. The report concludes that although lax laws may sometimes be a contributing factor to propagation of torture, it is the lack of democratic governance which is the most dominant contributing factor to the endemic occurrence of torture in Bangladesh.⁶¹³

Comments:

As the report's emphasis has been on the assessment of compliance of the laws of Bangladesh with the *Convention against Torture* and since the writing of the report, the Parliament has passed the *Torture and Custodial Death (Prevention) Act, 2013*, many of the observations on the existing legal edifice for punishment of torture may have become outdated. Thus, a new study on this particular law to assess its compliance with international standards may be worth pursuing. The observation of the report that torture and cruel, inhuman, or degrading punishment is not just an issue in the context of law enforcement, but applies to all contexts of custody or control, appears to be an important observation, as the discourse on these issues seems to be heavily focused on the law enforcement agencies and in the process it ignores other contexts where torture, or cruel, inhuman, or degrading treatment or punishment may be a recurrent issue.

The report apprehends that incongruity between the definition adopted by the

⁶¹⁰ Ibid, at 41. While the report does not say so, but it is difficult to fathom that the situation was any better during martial law governments as a government bereft of any popular mandate and accountability, the martial law government has no reason to refrain from resorting to torture.

⁶¹¹ Ibid, at 45.

⁶¹² Ibid.

⁶¹³ Ibid, at 64-65.

Convention and its incorporation in the domestic law may sometimes open the door for impunity.⁶¹⁴ Even where there may be similarity in the words used (that is, identical definition adopted by the Convention and the national law), the actual meaning and the application of the provision in the domestic context may be qualified by national law or judicial interpretation. For remedying this, the report suggests that “it is advisable to ensure that all branches of the government adhere to the definition set forth in the Convention for the purpose of defining obligations of the State.”⁶¹⁵ As laudable as the suggestion may be, to implement this merely a law would not suffice, rather the interpretation of the laws by the courts in a particular manner is needed. Therefore, it is not logical or even comprehensible as to how this objective can be achieved since it would in reality require the GOB to have control over the judicial interpretations of legal provisions.

Bibliographic Details:

Shahabuddin, Dr. Mohammad, *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Study on Bangladesh Compliance* (National Human Rights Commission, 2013)
<<http://www.nhrc.org.bd/PDF/Study%20reports/Study%20report%20CAT.pdf>> accessed 5 March 2015

⁶¹⁴ Ibid, at 52.

⁶¹⁵ Ibid.

Title of the Study: Torture in Bangladesh 1971-2004: Making International Commitments a Reality and Providing Justice and Reparations to Victims

Source of Funds: European Union's European Initiative for Democracy and Human Rights

Implementing Body: Redress Trust

Duration of the Project: Not available

Key-words: Torture, reparation, law enforcing agencies, and security agencies

Summary of the Report:

The report seeks to trace the reasons for lack of progress in putting an end to various forms of torture in Bangladesh and expects to contribute to a dialogue to make sure that it contributes to the taking of the required steps for fully complying with the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984 (*Convention against Torture*). Its findings are based on a seminar held in Dhaka on the right to reparation for victims of torture, various official documents, and NGO reports. According to the report, torture by public officials in Bangladesh has started since it gained its independence and it is a very common and ingrained problem in this country. Although Bangladesh ratified the *Convention against Torture* in 1998; the report argues that instead of eradication or reduction of torture, the incidents of torture had actually increased during the period of the writing of the report.⁶¹⁶ According to the report, members of the police and other law enforcing agencies, armed groups associated with the political parties, and dissident groups from the CHT region are frequent perpetrators of torture in Bangladesh.

The report notes that during the war of independence of Bangladesh in 1971, the Pakistani forces and their local collaborators committed severe atrocities in Bangladesh for which they were never made accountable and this continues to be deeply frustrating for many victims of atrocities.⁶¹⁷ According to the report, due to lack of advanced techniques of investigation and corrupt motives (to extract money from detained suspects or members of their families), police often resort to torture.⁶¹⁸ To thwart any movement of opposition political parties, their members are often tortured by police.⁶¹⁹ Torture of people from various minority groups, women, and children by law enforcing agencies as well as by members of the public are common in Bangladesh, the report notes. The report finds that as Bangladesh has not acknowledged the competence of international bodies such as the Committee against

⁶¹⁶ Redress Trust, *Torture in Bangladesh 1971-2004: Making International Commitments a Reality and Providing Justice and Reparations to Victims* (2004) <<http://www.refworld.org/pdfid/4bf3a6e92.pdf>> accessed 22 February 2015, at 9.

⁶¹⁷ Ibid, at 27.

⁶¹⁸ Ibid, at 10.

⁶¹⁹ Ibid.

Torture or the Human Rights Committee to receive any individual complaint on torture, victims of torture are solely left with national remedies. International oversight on torture in Bangladesh is limited to the scrutiny of national reports submitted to various treaty bodies. The report also discusses the relevant statutory laws and judicial precedents on constitutional, criminal, and civil law avenues and remedies that may be availed by the victims of torture or members of their families (if the victim is dead).

The report finds that due to lack of independence and a desire for saving their colleagues, members of the police force generally have little incentive to investigate allegations of torture. The report notes that victims of torture often find it extremely difficult to gather enough evidence necessary for securing the conviction of the perpetrators. In order to remedy this, referring to the LCB's report no 17 of 1998 and the decision of the HCD in *BLAST and Others v Bangladesh*, the report recommends that when a person in police custody dies or suffers any serious injury, the burden of proof must rest on the police to explain how such death or injury has occurred.⁶²⁰

The report concludes with a set of recommendations. It urges the Government of Pakistan and GOB to launch a consultative process to ensure justice and reparation for victims of atrocities in the war of 1971. It calls upon the GOB to pave way for victims of torture to invoke individual communication mechanism either by GOB making a declaration under Article 22 of the *Convention against Torture* or by acceding to the *Optional Protocol to the International Covenant on Civil and Political Rights*, 1966. The report advocates for repealing the immunities and defences in relation to torture such as Section 197 of the CrPC and the *Joint Drive Immunity Act*, 2003.⁶²¹ It also suggests that the *Police Act*, 1861⁶²² - a colonial relic; must be replaced with a new law which would strive to protect human rights and strengthen the integrity of the police force. The report suggests that Bangladesh must put in place a victim and witness protection mechanism. It also urges the higher judiciary of Bangladesh to incorporate comparative constitutional jurisprudence and invoke international human rights law in their judgments.

The report suggests that arranging some sort of open days or holding public meetings between members of the law enforcing agencies and the public may be used as confidence-building exercises. It urges NGOs, academics, lawyers, and the media to work on increasing public awareness in addressing the needs and rights of torture victims. It also suggests that these pressure groups should file writ petitions for protecting the rights of torture victims and invoke tort remedies before civil courts and seek the application of Section 545 of the CrPC for awarding fines as compensation to victims.

⁶²⁰ Ibid, at 35, referring to the LCB, 'Final Report on the Evidence Act, 1872: Relating to Burden of Proof in Cases of Torture on Persons in Police Custody' (LCB Report No 17, 30 November 1998) <<http://lc.gov.bd/reports/17a.pdf>> and *BLAST and Others v Bangladesh* (2003) 55 DLR (HCD) 363.

⁶²¹ Act No. 1 of 2003.

⁶²² Act No. V of 1861.

Comments:

Some of the recommendations of the report, such as the enactment of a law making torture a crime has been implemented by passing the *Torture and Custodial Death (Prevention) Act*, 2013.⁶²³ Similarly, the GOB has also set up the NHRC which was a recommendation of this report. While the GOB has set in motion the trial of collaborators of the Pakistani armed forces, the members of the Pakistani forces remain totally unscathed. Hence, the GOB should not abandon its diplomatic efforts to hold them accountable for the atrocities committed by them. If the GOB follows the recommendation of the report and allows individual communications from victims of torture seeking international remedies, that can go a long way in seeking redress for torture. As there is no limitation period for trial of tortures; it may not be too late for the GOB to repeal the *Joint Drive Immunity Act*, 2003. While the higher judiciary in Bangladesh often resorts to comparative constitutional jurisprudence, in view of the pronouncement of the AD in *Hussain Muhammad Ershad v Bangladesh and Others*, regarding the status of international law; there seems to be limited scope and efficacy of invoking international law by the HCD in their judgments.⁶²⁴

Bibliographic Details:

Redress Trust, *Torture in Bangladesh 1971-2004: Making International Commitments a Reality and Providing Justice and Reparations to Victims* (2004) <<http://www.refworld.org/pdfid/4bf3a6e92.pdf>> accessed 22 February 2015

⁶²³ Act No. 50 of 2013.

⁶²⁴ (2001) 21 BLD (AD) 69 holding that Bangladeshi courts would not treat international treaties signed by the state as binding legal provisions unless their provisions have been expressly incorporated into domestic law by a legal instrument.

SUB-SECTOR WISE COMMENTARIES

CHILDREN ISSUES

By passing of the *Children Act, 2013*¹ repealing the *Children Act, 1974*,² at least there has been a noticeable shift in the legal regime for the protection of the interests of children in Bangladesh. The Preamble of the *Children Act, 2013* unequivocally proclaims that this law has been passed to implement the legal obligations of Bangladesh as a signatory to the *United Nations Charter on the Rights of the Child, 1989* which has been a persistent recommendation of the reports on protection of children. However, as has been observed in a report that just to evade the responsibility of undergoing additional legal procedures, police may falsely increase the age of a child³ would imply that there may be significant continuing gap between de jure and de facto treatment of children in conflict or in contact with the law. For reducing the maltreatment and abuse of children, all persons concerned with the administration of arrest and detention facilities of children may be obliged to go through compulsory record check and be subject to stringent supervision.⁴ Similarly, the findings that the currently practiced non-periodic inspection of detention facilities by government-appointed committees and judges occur and the results of such inspection should be publicly disclosed for their greater utility, warrants serious consideration by the GOB.⁵ The passing of the new law in 2013 has substantially changed the legal regime of children rights in Bangladesh; hence, how and to what extent its application in real life has improved the situation may an in depth research.

Legal aid and other support to sexually abused and exploited children is necessary but it should be remembered that these are just remedial in nature, not preventive and even these may be constrained by non-cooperation of the public bodies vested with the task of providing them. So, the recommendation on raising awareness and including education on sexual health in primary and secondary school curricula which may protect many children from abuse deserves consideration.⁶ Such education may help to dispel the limitations of a culture in

¹ Act No. 24 of 2013.

² Act No. XXXIX of 1974.

³ Penal Reform International and Bangladesh Legal Aid and Services Trust, *A Review of Laws and Policies to Prevent and Remedy Violence against Children in Police and Pre-Trial Detention in Bangladesh* (2013) <http://www.penalreform.org/wp-content/uploads/2013/06/BANGLADESH-A-review-of-law-and-policy-to-prevent-and-address-violence-against-children_English.pdf> accessed 4 January 2015

⁴ Ibid.

⁵ Ibid.

⁶ Lubna Marium, *Children Cry Alone* (Ain O Salish Kendra, 2004).

which “by and large, disclosure of negative experiences is not part of the dominant practice in families or schools.”⁷ The society’s reservations and sensitivities regarding this matter can be understood; however, a minimum level of education so as to enable children to identify abusive acts, may be helpful.

A report has observed that the meeting of the apex body designed to work on the protection of children in Bangladesh, the National Children’s Council could not be held for years because of the demanding schedule of its members who are mostly high level bureaucrats.⁸ Although this is disappointing, but hardly surprising as has been mentioned in a report that despite the presence of a number of policy instruments relating to the welfare of children in Bangladesh, the impact of these instruments are peripheral mainly because they rarely impose any specific obligation on public officials or allocate proper funds for executing the plans and aspirations expressed in them.⁹ An independent study into how the National Children’s Council can be turned into a functional and effective body may be undertaken. In making policies on children, policy makers would have to take into account of the harsh economic realities in which children from poor families find themselves in, which may shatter their aspirations for the pursuit of education or other lifelong skills.

⁷ Ibid, at 69.

⁸ Ibid, at 27.

⁹ Md. Rizwanul Islam, *Regulating the Unregulated Domestic Works by Children* (2014) <<http://www.nhrc.org.bd/PDF/Study%20reports/Children.pdf>> accessed on 18 January 2015.

COURTS AND ADMINISTRATION OF JUSTICE

The analysis of the reports of projects undertaken in the ‘courts and administration of justice’ sector reveals that backlog of cases and corruption are the two most significant impediments towards the proper functioning of the courts and their efficient administration. Reports have suggested numerous policy and practical measures which may be undertaken to streamline the processes involved in the court so as to make them less time consuming, easily accessible to the public and protected from abuse by the influential sections of the population. One recommendation to decrease the severe backlog of cases as suggested by a report is to set up a preliminary vetting system to review matters such as suit-maintainability, proper filing of documents, payment of court fee, etc. seems to be a very pragmatic measure which may go a long way to save precious time for the court during trial.

The recruitment of qualified professionals to administer the courts and framing of Standard Operating Procedures (SOPs) for the courts may inject some amount of efficiency and professionalism back into the system that has been plagued by a severe lack of apt administrators and unprofessional conduct. In addition, a professional code of conduct for all court staff is also of essence, along with the implementation of ‘zero tolerance’ policy towards bribery and malpractice. In order to decrease court staffs’ susceptibility to corruption, their salaries may be increased. Furthermore, new technologies such as barcoding of all submitted documents, use of scanned documents, online payment of court fees, automatic case management systems; if set up and properly utilised, will significantly increase the efficiency of the courts and also decrease the avenues for corrupt practices.

Administrative and logistical development of the courts in itself is not enough to ensure its efficiency, in the same manner as appointing more judges did not significantly help the dire situation of backlog of cases; because not only are more judges and better staff required, but better lawyers who are disincentivised to delay court proceedings, and court users who are aware of the various formal and informal dispute resolution institutions and appropriate forums for redress, are also needed to ensure the holistic efficacy of the developmental measures undertaken by the government. Therefore, to that end alternative dispute resolution mechanisms starting from traditional *shalish* all the way up to commercial arbitration needs to be encouraged and incentivised by the courts and the lawyers, which may require reforms in the civil legal regime.

The causes of delays during the civil suits and criminal cases include procedural loopholes, non-appearance of witnesses, submission for fingerprint and handwriting analysis, ineptness of one of the parties (generally? the prosecution in criminal trials). Such shortcomings lead to over decade long life span of cases especially for suits for partition of land and trial of murder cases. Such long delays in case of criminal trials lead to the overcrowding of prisons with those awaiting trial, thereby stretching the efficiency of the prison system and depreciating the quality of service that they provide.

The observation that even after the landmark judgement by the High Court Division in the *Mazdar Hossain Case*, the subordinate courts still report to the Supreme Court and the Ministry of Law, Justice and Parliamentary Affairs has been observed, which is causing a number of logistical and administrative complications which inadvertently hampers the efficiency of the subordinate courts and their independent operation. Lastly, the polarisation of public institutions including courts due to the disruptive competition between the two major political parties has had a corrupting influence on the entire court system in the form of influenced judgements, appointment of undeserving judges, loss of accountability and more significantly, crippling of judicial independence. The political bipolarisation has also greatly impacted the law enforcing agencies whose adverse effects precipitates to the judiciary in the form of frivolous and false criminal cases, harassment of innocents, and lack of proper evidence production thus causing delays.

Therefore, a holistic approach needs to be undertaken in order to truly establish an efficient and effective court system, and to administer justice for all segments of the population. To achieve that end, all stakeholders including the law enforcing agencies, prison administration, lawyers and even ordinary court users, in addition to the judges and court staff; need to play their own significant part so as to create and maintain a functional and efficient court system that provides justice.

GENDER ISSUES

The reports on gender issues demonstrate a broad consensus that at least from the viewpoint of law reform, considerably more progress has been achieved (at least in terms of the statutory framework) on violence against women both within public and family sphere; however, on personal matters such as marriage, dissolution of marriage, maintenance of wife and children, custody and guardianship, inheritance etc., the religion and custom based laws in Bangladesh still discriminate against women. The discriminatory features permeate almost all areas of personal laws and they are applicable to all the religions followed in Bangladesh and even in indigenous communities albeit in varying degrees. Discriminations apart, some ambiguities may arise in certain cases regarding the validity of marriage and custody, and property rights when persons professing different religions get married without renouncing their religious affiliation and solemnising the marriage under the special legal framework of the *Special Marriage Act, 1872*.¹⁰ Reports find that religion and custom based laws on personal matters are sometimes open to varying interpretations by religious clerics and community leaders which may sometimes be borderline subjective, and thus, the religious dicta are susceptible to abuse and misuse by vested interest groups.

For all these reasons, reports covered by this knowledge mapping exercise, agree that the reform of religion-centric personal laws must take place. They also broadly agree that while some sort of law reforms in personal laws has taken place, they have rarely substantially modified the rigours of the religious laws and have not gone far enough. For instance, the *Muslim Family Laws Ordinance, 1961*¹¹ has protected the inheritance right of a grandson to his grandfather's property but has not considered the case of inheritance of the deceased's wife to the property which she could have inherited from her husband.¹² Similarly, while it has made provision for punishment of a husband for an unauthorised second marriage, the law has not touched the validity of the second marriage. Similarly, while solemnising a child marriage is a punishable offence under the *Child Marriage Restraint Act, 1929*,¹³ the marriage itself remains legally valid provided the conditions of a valid marriage under the respective religious laws have been complied with.

If the consensus on the need for reform is the converging point among the reports, the extent and form of the reform is their diverging point. At one end of the spectrum, there is a call for a uniform family code (or at least a support for its moral case) which would be applicable to all citizens of Bangladesh irrespective of the religion they affiliate themselves

¹⁰ Act No. III of 1872.

¹¹ Ordinance No. VIII of 1961.

¹² Bangladesh National Women Lawyers' Association, *Widow's Plight in Bangladesh: Rethinking Policies* (2002) at 93.

¹³ Act No. XIX of 1929.

with.¹⁴ On the other extreme end of the spectrum, there is an argument that any law reform in a sensitive area like this must take a gradualist approach and should focus on exploring potential ways of liberal interpretations of the religious scriptures and should not deviate from them as the broader population is not yet ready.

The challenges to any significant law reform mainly stems from a real or perceived disinclination of a significant section of the population to embrace a secular, uniform family code and stick to the religion based personal laws. The fact that law reform initiatives have focused on substantive law reform on violence and similar issues indicates the sensitivity of successive governments in undertaking law reforms on family issues. Hence, any law reform without substantial community engagement and consultation may not be able to yield its desired outcomes. To the extent possible, it may help if the reform can be demonstrated to be not in contradiction with religious scriptures, even if not explicitly authorised or endorsed by them. When social norms actively encourage victims not to vindicate their legal rights, the legal provisions in themselves would be of limited use. Hence, the sensitisation of the community about greater gender equity is something that the GOB must endeavour to achieve.

Some sections of the community of religious minority groups (particularly the Hindus) have a perception that adoption of any uniform family code or undertaking any radical reform to the orthodox Hindu laws would mean absorption of their culture into the majority culture or that Hindu women would be allured to convert and marry non-Hindus so that non-Hindu husbands can take away their property.¹⁵ While the first concern is somewhat esoteric and difficult to dispel, the concern about seduction of Hindu women is probably misplaced as conversion anyway would disentitle a Hindu woman from inheriting family property.¹⁶ That being said, the concern of loss of cultural identity must be taken into account and the policy makers must be able to assuage their concerns. Similarly, it has been pointed out in the reports that the beneficiaries of the intended law reform initiatives are an amorphous group compared to the detractors of reform who are organised and tend to actively purport to represent the views of the community in policy dialogues. Hence, the policy makers should mobilise the community support for pushing their efforts on law reform to go through. If the hardship inflicted upon the members of the community by maintaining status quo is explained to the public at large, it may be expected that gradually such support would be forthcoming.

¹⁴ Shahnaz Huda, *Combating Gender Injustice: Hindu Law in Bangladesh*, (South Asian Institute of Advanced Legal and Human Rights Studies, 2011).

¹⁵ Women for Women, *Marriage, Inheritance and Family Laws in Bangladesh: Towards a Common Family Code* (2005), at 97; Law Commission of Bangladesh, *Hindu Paribarik Ain Songskarer Suparish Bishoyok Ain Commissioner Churanto Protibedon (Final Report of the Law Commission relating to the Recommendations on Reform of Hindu Personal Law)* (Law Commission's Report No. 119, 7 August 2012), <<http://www.lc.gov.bd/reports/119-%20Hindu%20Law-%20Final.pdf>> accessed 9 January 2015.

¹⁶ Ibid, Law Commission.

It may also be pointed that issues surrounding the law reform are more complex than as they may seem to be portrayed in some of the reports. For instance, unless virtually unfettered divorce right of a Muslim man is curtailed, the husband can simply divorce the first wife and re-marry. Hence, simply prohibiting polygamy without further reform in the law may be futile. On the other hand, nullifying the second marriage without easy access to the information contained in the marriage registers may cause greater hardship to the second wife who may not be aware of the first marriage of the husband.

In a similar vein, it may be argued that some recommendations of the report are perfunctory and may engender unintended consequences or need further research before they are implemented. For instance, while there is a cogent reason to agree to the proposition that imposing a decree of restitution of conjugal rights on an unwilling spouse is inhumane, the complete abolition of the right to apply for restitution of conjugal rights may mean that when a person is willing to live with his/her spouse, but is prevented from doing so by his/her relatives; the helpless spouses would effectively lose a much needed access to a legal avenue to pursue. Of course, alternative remedies such as a *habeas corpus* petition or wrongful confinement/false imprisonment or other similar remedies may be at her/his disposal but the comparative costs and advantages of these alternative remedies need to be explored before drawing a certain conclusion on the merits of abolition of restitution of conjugal rights.

Social security programmes of the GOB for distressed women exist but fail to cater for the needs of the many who are in desperate need for support, particularly because of the long bureaucratic process, misuse of funds, and even lack of information on the availability of funds. The suggestion on linking the family courts to the social security programmes may help to reduce the information gap,¹⁷ but whether or not the already stretched family court administration is capable of taking up any further administrative functions is uncertain. Appointing more judges in the family courts may ensure some modicum of result in terms of speeding up the proceedings in family courts, but unless the age-old procedural issues which plague the efficient and expeditious administration of civil justice can be addressed, this would likely have modest outcome.

Lack of awareness about statutory laws like the *Domestic Violence (Prevention and Protection) Act, 2010*¹⁸ as cited in a report is a matter of concern and it indicates that the GOB's efforts on raising awareness among the intended beneficiaries of laws should be strengthened. The findings of a report that working women are prone to suffer more violence and abuse in their homes would appear to challenge the conventional wisdom that income generation should empower women and should somewhat reduce their vulnerability to domestic violence. Further studies on this phenomenon may be helpful to get a more complete explanation on this.

¹⁷ Human Rights Watch, "Will I Get My Dues ... Before I Die?": Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce (2012) <<http://www.hrw.org/sites/default/files/reports/bangladesh0912ForUpload.pdf>> accessed 7 May 2015, at 102.

¹⁸ Act No. 58 of 2010 [Human Rights Watch].

Until a uniform family code overriding the existing myriad of religion and custom based laws is adopted, more research is needed to explore the ways for resolving the inter-faith marriage intricacies and tinkering with religion-based personal laws to make them less discriminatory or adopt necessary laws in areas where there is a lack of it. For instance, a report has identified that there is a need for undertaking further research on Muslim Law of adoption which actually takes place in fact without being governed by any specific legal regime.¹⁹ With regard to the reform of Hindu Laws, it appears that while the reports have made reference to the reform of Hindu laws in India and have discussed the actual contents of the substantive laws, how the opposition to the forces antagonistic to any reform on Hindu Law have been overcome have not been studied with any great detail. Although the context of the countries may differ, such insight may have value for Bangladesh. The legal recognition of marital property would be a very important tool for increasing the stature of women and decreasing their vulnerability when a marriage falls apart. In an indirect way, this provision may, for good or bad, be somewhat a deterrent against capricious resort to divorce as the prospect of being forced to share the marital property may make some husbands think twice before divorcing his wife.

¹⁹ Sara Hossain, (ed), *Muslim Women's Rights under Bangladesh Law: Provisions, Practices and Policies related to Custody and Guardianship* (South Asian Institute of Advanced Legal and Human Rights Studies, 2011).

HUMAN TRAFFICKING

Reports on human trafficking laud the passing of the *Prevention and Suppression of Human Trafficking Act, 2012*²⁰ (*Human Trafficking Deterrence Act*) and notes that in Bangladesh, there are also other laws and policies for preventing human trafficking and punishing the offenders committing human trafficking. In particular, it has been stated that by passing the *Human Trafficking Deterrence Act*; for the first time in Bangladesh, statutory law has recognised not just children and women but also men as the victims of human trafficking. More importantly, this new Act is a paradigm shift in the sense that it views the victims of trafficking not as violators of law but as victims and has provided compensatory and rehabilitating measures for them.²¹ However, the report alleges that due to the lack of awareness of police officers and courts, often trafficking cases are not being filed under this recent legislation.

In defiance of their legal rights, victims of trafficking are often sent back to their families which in turn make them vulnerable to pressure by the traffickers and ultimately compel them to withdraw their cases.²² The report argues that many victims are quite uninformed of their right to compensation which too may have persuaded them to withdraw their cases. However, as offences under the *Human Trafficking Deterrence Act* are non-compoundable, it is not clear how cases of human trafficking may legally be withdrawn by the victims. Possibly, the victims simply do not co-operate with the prosecution and thus, make it difficult for the prosecution to prove its case. Even if this happens, it would imply a failure of the law enforcing agencies and the prosecution to provide adequate security and support to the victims; how these limitations can be addressed, should be studied in depth.

The reports seem to overly emphasise the push factors in Bangladesh and seem to have little focus on pull factors in the destination countries and what measures may be taken to address them.²³ There must be certain beneficiaries of the works performed by these illegally trafficked persons and it may be explored what sort of interventions may be made in the destination countries for bringing about positive changes. The role played by the legislative interventions in the United Arab Emirates in eliminating the trafficking of children

²⁰ Act No. 3 of 2012.

²¹ Bangladesh National Women Lawyers' Association, *Human Trafficking in Bangladesh: Analysis, Challenges & Recommendations* (2013).

²² Ibid.

²³ See for example, Rukhsana Gazi et. al., *Trafficking of Women and Children in Bangladesh: An Overview* (ICDDR,B Special Publication No 111, 2001) <http://www.icddrb.org/publications/doc_download/669-trafficking-of-women-and-children-in-bangladesh-an-overview-sp111-2001> accessed 4 February 2015.

for being used as camel jockeys²⁴ may be a case in point. Of course, there are significant differences between trafficking in general and children being trafficked for being used as jockeys. This is because, in case of trafficking for being used as jockeys, the victims were not consenting participants, in case of trafficking of adult males for other purposes; often the victims themselves are willing participants. Similarly, the overt display of jockeys being used in camel races may be easier to contain than a much more complex and myriad forms of engagement of trafficked adults. Nonetheless, this shows that measures taken by destination countries can also play a significant role in reducing human trafficking.

²⁴ Anti-Slavery, *Information on the United Arab Emirates (UAE) Compliance with ILO Convention No.182 on the Worst Forms of Child Labour (ratified in 2001)* (May 2006) <http://www.antislavery.org/includes/documents/cm_docs/2009/2/2006uae_cameljockeys.pdf> at 24 May 2015.

INDIGENOUS COMMUNITIES

From the reports covered by this knowledge mapping exercise, it appears that there is a disproportionate focus on the issues confronted by indigenous people in the Chittagong Hill Tract (CHT) region and the problems of indigenous people in other parts of the country seem to have gained less attention. This is problematic for at least two reasons. Firstly, because the official statistics show that indigenous people in the CHT region are less in number than that of the plain regions in Bangladesh. Secondly and more importantly, while in the CHT region, people belonging to indigenous communities form a sizeable group, in the other parts of Bangladesh, they are dispersed and even fewer in number and hence, may face even more problems.

Regarding the CHT region, studies analysed in this report find that the problem with the defunct Land Commission is possibly the biggest impediment to long-lasting peace in the region.²⁵ The sticking point for the Land Commission is whether the majority of members of the Commission would be indigenous or Bengalis and whether the Chairperson should enjoy a veto power when other members cannot agree. Hence, policy makers need to come up with a formula which is capable of reconciling the seemingly intractable positions of the indigenous and non-indigenous people of the CHT region regarding the composition of the Land Commission. Any future resettlement of indigenous people in the CHT region back to their land should also consider the issue of re-settlement of Bengali settlers who may have settled in the region with endorsement of the GOB or some people who may have purchased the land for valuable consideration with no knowledge of acquisition of flawed title.²⁶

The reports also agree that the continued presence of the military camps and the overt or covert involvement of the armed forces in the administration of the CHT region are not conducive to durable peace and there should be a gradual de-escalation of the military engagement in the region.²⁷ The enactment of a proposed law entitled, Traditional Forest Dwellers (Recognition of Rights) Act may reduce the vulnerability of the indigenous people and protect them from eviction from land or curtailment of their livelihood because of the GOB's decision to declare certain areas as forest land and should also reduce frictions

²⁵ See for instance, Shamsul Huda (ed.), *Parbotto Chotrogramer Bhumi Somosya O Paharider Odhikar* (Land Problems and Rights of Hilly People in Chittagong Hill Tracts) (ALRD, 2010).

²⁶ Amnesty International, *Pushed to the Edge: Indigenous Rights Denied in Bangladesh's Chittagong Hill Tracts* (2013) <http://www.amnesty.org.uk/sites/default/files/pushed_to_edge.pdf> accessed 15 January 2015, at 42.

²⁷ Dr. Abdullah Al Faruque, *Implementation of the Chittagong Hill Tracts Peace Accord: Challenges and Human Rights Issues* (National Human Rights Commission, 2014) <<http://www.nhrc.org.bd/PDF/Study%20reports/Implementation%20of%20the%20Chittagong%20Hill%20Final%2000003.pdf>> accessed 15 January 2015.

between the department of forestry and forest dwelling indigenous and non-indigenous people regarding their use of forest land.²⁸

The finding of a report that positive changes with regard to the protection and promotion of rights of indigenous communities have little nexus to the international legal obligations of the GOB or pressure exerted on it by the international community, but are essentially outcomes of domestic political impulse²⁹ is interesting but may not be surprising because of Bangladesh's dualist approach to international law i.e. the legal position that international legal norms are not applicable in the domestic courts unless they are expressly made part of national law by an incorporating statute. However, this should not discourage human rights defenders in Bangladesh and the international community to lobby the GOB to act for the promotion of indigenous rights, as the report finds that international treaties can play at least a limited role particularly when deliberations take place during the process of reporting under various treaty bodies and its impact gets diminished as the process reaches fruition. In other words, the challenge for these pressure groups is to sustain their active engagements with the GOB.

The policy makers should consider ways for inclusion of indigenous people from the plain land in the decision-making processes of the *Special Affairs Division*, which is the most important national-level institution dealing with issues of indigenous people of the plains.³⁰ In this regard, the demand of these communities for the establishment of a separate Ministry of Indigenous Affairs may merit consideration.³¹ Similarly, for making local government bodies more responsive to the needs of indigenous people from plain land, in local government bodies such as union parishads, a fixed number of seats may be reserved for indigenous people.³² A challenge to the peace process may come if the Appellate Division of the Supreme Court upholds the decision of the High Court Division declaring that some of the provisions of the laws arising out of the Peace Accord of 1997 are unconstitutional and the policy makers may do well to have a contingency plan for such a scenario.

²⁸ Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 and the Laws of Bangladesh: A Comparative Review* (2009) <http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-dhaka/documents/publication/wcms_114957.pdf> accessed 15 may 2015, at 17-18.

²⁹ Ibid, at 57.

³⁰ Ibid, at 37.

³¹ Ibid.

³² Ibid, at 19.

INFORMAL JUSTICE AND ADR

Reports on informal justice and alternative dispute resolution (ADR) mechanism observe that due to community acceptance, easy access, and informal nature; a community based informal justice mechanism commonly known as *shalish* is frequently used by justice seekers particularly in family related disputes or petty disputes. However, the informality and flexibility can often be a cause for trouble for women and financially backward sections of the community as this process is heavily dominated by local elites and its decisions may be in stark defiance to statutory laws. Reports also note that the *shalish* process is also heavily dominated by men; women rarely have any voice in the process. The challenge for NGO-run informal dispute resolution mechanism is probably to be more informal as may be evident from the finding of a report that justice seeker's apprehension about or frustration with the formalist approach, often encourage them shun or withdraw from this type of a mechanism.³³ Another finding that justice seekers want to be reassured about the enforceability of the decision obtained through a dispute settlement mechanism, be that formal or informal,³⁴ suggest that for informal justice mechanism established by law (i.e. the village courts and municipality courts) to be effective, they should be vested with direct authority to enforce decisions rendered by them.

For extracting better performance from village courts and municipality courts, an idea has been mooted that that an Assistant Judge (for civil matters) and a Magistrate (for criminal matters) for respective areas may be put in charge of monitoring these informal courts on a periodic basis.³⁵ While the performance of these courts may beg monitoring or supervision by competent bodies, it is not very certain whether the already overburdened judges in the lower judiciary with a huge case load, are equipped to perform this supervisory function to any meaningful degree. It may be suggested that if any judicial officer has to perform this type of a function, this should be their sole function or at least, they should have a reduced case load. Alternatively, persons with competence in law may be appointed for performing this role.

A study has argued that the disinclination of the judges and lawyers to resort to ADR mechanism is one of the principal reasons for a stark under-use of the mechanism.³⁶ The reasons for the disinclination of judges are difficult to comprehend and its investigation may

³³ Md. Abdul Alim and Tariq Omar Ali, *NGO-shalish and Justice-seeking Behaviour in Rural Bangladesh* (Research Evaluation Division, BRAC, 2007) <http://research.brac.net/reports/NGO_Shalish.pdf> accessed 2 May 2015

³⁴ Ibid, at 16.

³⁵ Law Commission of Bangladesh, *Bangladesher Prekhkhapote Bikolpo Birodh Nispotti (ADR) Bastobayon Songkranto Protibedon* (Report on the Implementation of Alternative Dispute Resolution in the Context of Bangladesh) (Law Commission's Report No. 104, 5 October 2010), <<http://lc.gov.bd/reports/ADR%20final%20Report%202010.pdf>> accessed 29 April 2015.

³⁶ Ibid.

warrant further research. Although the report does not say this, it is not improbable that a concern of earning less from reduced fees from clients is a disincentive for many lawyers to be keen on following the ADR route. There is a need for a perception study of all the relevant stakeholders in the ADR process, including judges and lawyers so as to identify the barriers to its large scale use in Bangladesh.

Section 5(5) of the *Village Courts Act*, 2006, provides that when either party to the dispute fails to make her/his nomination to the village court, the chairperson of the village court would issue a certificate stating that the applicant may file a case in the court of competent jurisdiction. It seems uncanny that when a responding party would fail to make a nomination to the village court, the matter can still be litigated in formal courts; rather conventional logic may suggest that the matter should proceed to be decided without any representation from the responding party. Otherwise, an unwilling responding party can strategically use this provision to delay the resolution of the dispute and push the complaining party to seek recourse to the formal judicial procedure which may entail significantly more costs. Thus, it appears that a revisit of this provision may be warranted. Without passing any opinion on the suggestion made by some, a report notes that establishing an appellate authority with seven persons to hear appeals from decisions rendered by village courts has been floated.³⁷ However, if we note that decisions passed by 3:2 majorities are already appealable before formal courts, another layer of quasi-judicial body may not be worthwhile.

³⁷ Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, *Review Report on Village Courts Legal Framework* (2012) <<http://www.villagecourts.org/Publication/Legal%20Framework.pdf>> accessed 1 May 2015.

LABOUR ISSUES

The reports suggest that the *Bangladesh Labour Act, 2006 (Labour Act)*³⁸ has made some substantial changes to the labour law which would generally have an ameliorating impact on the protection of the rights of workers and ensuring their safety at workplace. Particularly, they laud the introduction of the requirement of identification cards for workers, more generous provisions on minimum wage and overtime work, and entitlements on termination of work at the worker's instance etc. Nonetheless, there are many areas of concern that still remain. These concerns include, for instance, that workers engaged in domestic or agricultural work are outside the ambit of the statutory regime of protection and given the large number of workers employed in these sectors, reports recommend that these sectors should also be within the purview of the *Labour Act*.

The proposition of a report that because of the hazardous work done in some government owned entities, there is no cogent reason for them to be kept out of the purview of the *Labour Act*³⁹ – seems logical. As the scope of the actions of the modern government have expanded, the reasons for a blanket exemption for government owned bodies from the operation of the *Labour Act* does not seem to be justified. Rather, a better yardstick should be the nature and hazard of an industry. One may contend that the government entities are distinct in their mode of operation and profit motive – which may be out of touch with modern commercial realities. In fact, if the welfare provisions in the relevant statutes for government entities are good enough, then there seems to be no compelling reason for the workers not to be included within the *Labour Act* as no change in the existing policies should be required. Similarly, the policy makers should re-assess the plausibility of keeping research and educational institutions and small factories (because of the hazardous nature of many small factories) outside the purview of the *Labour Act*.⁴⁰

The findings of the reports that the inspection of factories are generally driven by reported incidents of accidents, is a matter of concern. As the GOB is increasing the number of labour inspectors, so should the frequency of inspection of factories by them be increased. An argument of a report that not only workers but also at least registered NGOs should have a right to file criminal cases to the Labour Court for violation of the Act seems to be of merit.⁴¹ Indeed, the approach taken by the report is restrictive and the requirement of having an approval of the Labour inspectorate as a pre-condition for filing such a case, should act as

³⁸ Act No. 42 of 2006.

³⁹ Safety and Rights, *Legal Reform to Prevent Workplace Death and Injury Including Analysis of Worker deaths, 2010-2012* (2013) <<http://www.safetyandrights.org/documents/Workplace%20death%202010-2012.pdf>> accessed 12 May 2015, at 70-71.

⁴⁰ Ibid, at 71.

⁴¹ Ibid, at 80.

a safeguard against frivolous or vexatious allegations. Similarly, the threshold of inspector's right to demand improvement of working conditions in factories should be lowered to 'unsafe' from the existing threshold of 'hazardous to human safety' and it should be extended to any aspect of the operation of a factory and not confined only to aspects of the building or plant.⁴²

The findings of a report that workers apprehend the loss of job and hence, they loathe to report to the inspectors about any hazardous aspect of a factory, and so, they need a legal safeguard, that for informing inspectors of any hazardous aspect of a workplace, they must not be sacked; may be a well-intended provision.⁴³ However, in practice such a safeguard is likely to fail to protect them from termination on ostensibly any alternative reason. Anonymous complaining or reporting system by workers to the factory inspectors can be used to ensure the anonymity of the whistle blowing worker in order to protect her/him from potential retaliation by employers. The observation of a report that although workers are generally paid the minimum wage fixed by the law, such wage is insufficient for a decent living⁴⁴ is a cause for grave concern and warrants the attention of policy makers. In view of the persistent inflationary pressure in Bangladesh, the wage of workers should be adjusted in such a way that their wage do not lag behind of what is needed for decent living.

⁴² Ibid, at 79.

⁴³ Syed Robayet Ferdous et. al., *Security and Safety Net of Garments Workers: Need for Amendment of Labour Law* (2014) <<http://nhrc.org.bd/PDF/Study%20reports/GARMENTS%20WORKERS.pdf>> at 20 January 2015.

⁴⁴ Jakir Hossain, Mostafa Ahmed, and Afroza Akter, *Decent Work and Bangladesh Labour Law: Provisions, Status, and Future Directions* (2010), at 74-75.

OTHER LAW ENFORCING AGENCIES

Since there have been a considerable number of allegations of violation of human rights by the Rapid Action Battalion (RAB), the idea that it be disbanded would be persuasive; but it may be politically a quixotic proposition. Disbanding RAB may be difficult as the GOB overly relies on law enforcers and any radical policy reversal may not be pragmatic for it. Even a report containing scathing critiques of RAB notes that notwithstanding grave allegations about the modus operandi of RAB, because of its professional and well equipped nature among the existing law enforcing agencies in Bangladesh, governments of economically developed countries have often worked with it in counter-terrorism measures.⁴⁵

Having said that, maintaining the status quo is not conducive to the protection of human rights. There is a legitimate reason to be concerned as to whether members of the armed forces who are trained up with a different orientation and for attaining purposes which are different from law enforcement agencies; how far they can adapt their skills for performing law enforcement duties for a limited period.⁴⁶ Hence, there may be a scope for assessing the rationale behind the inclusion of the members of the armed forces and the contribution that they make which members of civilian law enforcing agencies are not adequately capable of. A detailed comparative study on the structure of similar Special Forces in neighbouring countries may shed some light as to what may be done in this regard. There is also a strong moral case for the clarion call for all administrative and judicial proceedings against any RAB member (and by analogy, should extend to members of other law enforcing agencies too) for any alleged violations of human rights to be open to public scrutiny and the participation of victims and their family members - something which has not occurred too often.⁴⁷

Regarding the dreadful incidents that took place during the BDR mutiny of 2009 and the serious allegations of violation of human rights of BDR soldiers during the events that followed, a report has pointed out a self-contradiction in the report by the military which ruled out any genuine reason or substantial grievance among the soldiers of BDR to have fuelled the mutiny, but at the same time accused the Ministry of Home Affairs for its failure to appreciate the gravity of the grievances of the soldiers.⁴⁸ It also points out that the claim of

⁴⁵ Human Rights Watch, *“Crossfire”: Human Rights Abuses by Bangladesh’s Rapid Action Battalion* (2011) <<http://www.hrw.org/sites/default/files/reports/bangladesh0511webwcover.pdf>> accessed 12 January 2015, at

⁴⁶ Ibid, at 45.

⁴⁷ Ibid, at 44.

⁴⁸ Human Rights Watch, *“The Fear Never Leaves Me”: Custodial Deaths, Torture and Unfair Trials after the 2009 Bangladesh Rifles Mutiny* (2012) <<http://www.hrw.org/sites/default/files/reports/bangladesh0712ForUpload.pdf>> accessed 19 April 2015, at 23.

the GOB's probe committee that an alleged evil design of destabilising BDR or destroying the morale or reputation of the military force or creating mayhem in Bangladesh prompted the mutiny has not been supported by any evidence.⁴⁹ Thus, it begs a question whether the real purpose of the probe committees have been served or whether the investigations have served the imperative of certain self-fulfilling narratives. The disproportionately heavy clout of the members of the security forces is apparent when the probe committee formed by the GOB itself accuses the security forces for non-cooperation while conducting its probe⁵⁰ and it does not augur well for the authority of the political forces.

⁴⁹ Ibid, at 22.

⁵⁰ Ibid, at 21.

PRISON ADMINISTRATION

A report observes that the retribution and deterrence based penal philosophy strains the limited resources of the prison regime in Bangladesh.⁵¹ Intuitively, the disproportionately low number of probations granted in comparison with the large number of prisoners,⁵² may prompt one to conclude that there is a tendency of not accepting petition for probations. However, this intuitive conclusion may not have given a complete picture as a better indicator of the penal philosophy and practice would require the number of applications made for probation and the number of applications accepted. Furthermore, the HCD has observed that “[t]he penal system of Bangladesh is essentially reformatory in character as opposed to retributive. The *Probation of Offenders Ordinance* is a prime example of such a policy.”⁵³ Thus, whether or not the low number of probations granted is driven by a value-laden sentencing philosophy leaning towards retribution and/deterrence or whether simply the lack of applications for release on probation is the reason - seems to be an open question. Thus, a more rigorous analysis would be required to capture the perception of judges, the lawyers and others involved.

It has been observed that the allocation of budget for probation services is too low and most of the allocation being spent on administrative costs, that is for payment of salaries and costs relating to the maintenance of office.⁵⁴ This along with the fact that as of 2013, there were only 44 probation officers in Bangladesh (indicating that there were no designated probation officers for many districts and social welfare officers at district and upazilla levels had to perform this role, in addition to their other responsibilities).⁵⁵ The law requiring supervision of probation of women by women officers and the lack of women probation officers severely restricts the scope for women to be released on probation.⁵⁶ Similarly, the disinterest on the part of police to initiate the probation proceeding for children in conflict with the law by contacting the probation officers limits the scope for many children to be released on probation.⁵⁷

⁵¹ Bangladesh Legal Aid and Services Trust and Penal Reform International, *Development and Use of the Probation System in Bangladesh* (2013), at 39.

⁵² Ibid, at 52.

⁵³ *Abdul Khaleque v Hazera Begum and Another* (2006) 58 DLR (HCD) 322, quoted in ibid, at 38.

⁵⁴ Ibid, at 50.

⁵⁵ Ibid, at 41.

⁵⁶ Ibid, at 49-50.

⁵⁷ Ibid, at 50-51.

While reports have emphasised on the need for implementation of the recommendations of the *Bangladesh Jails Reform Commission Report* of 1980 (also known as Munim Jail Reform Commission), no thorough analysis on which aspect of the recommendations have been implemented or unimplemented and the potential challenges to the implementation of the Commission's report seems to have taken place. Through a pilot study, the effect of greater recourse to probation may be explored i.e. whether or not greater allocation of resources on probation services reduces the burden on resources spent on prison administration, may be studied. Another report's claim that there is a pressing need for cooperation among various NGOs working for the betterment of children in conflict with the law would benefit from detailed account of their activities, and the report also identified overlaps in them.⁵⁸ In a similar manner, the framework for the perceived need for a concerted effort of the police, probation officers, and NGOs so as to ensure prompt disposal of proceedings before juvenile courts also warrants more research.⁵⁹

⁵⁸ Retired Police Officers Welfare Association Bangladesh and Action Aid, *Under-aged Prison Inmates in Bangladesh: A Sample Situation of Youthful Offenders in Greater Dhaka* (2008) <<http://www.infokosh.gov.bd/download-attachment/889/706>> accessed 3 May 2015, at 62.

⁵⁹ Ibid, at 60.

REFUGEES AND UNDOCUMENTED FOREIGNERS

Reports have documented the various travails that Rohingya refugees in Bangladesh face which is compounded by Bangladesh's lack of any concrete legal regime or administrative policy instrument on the protection of refugees.⁶⁰ Although in view of Bangladesh's constraint in resources, its stubborn rejection of any prospect of integration of the Rohingyas within the local community is comprehensible, the suggestion of a report that for augmenting the appeal of Rohingyas as potential candidates for resettlement to willing third countries, the GOB's role in facilitating access of these virtually stateless people to education and vocational training needs to be considered.⁶¹

Anonymous complaining or reporting system by workers to the factory inspectors can be used to ensure the anonymity of the whistle blowing worker in order to protect her/him from potential retaliation by employers. It would appear that unrelenting support of international donors would be necessary for ensuring success of such programmes. Myanmar's slow but gradual shift from a totally authoritarian regime to an at least ostensibly democratic regime and growing involvement of the international community with Myanmar may have opened the scope for the international community to pull their weights on authorities in Myanmar for putting an end to their systemic denial of rights to Rohingyas and their persecution.

The long-standing socio-economic sufferings of Biharis or stranded Pakistanis (as they are frequently referred to) in Bangladesh has been well documented.⁶² However, more research is needed on exploring ways for taking up programmes by national and international humanitarian agencies for integration (though not absorption) of Biharis with the wider community. The repatriation of Biharis to Pakistan or their settlement in an eager third country may be a very complex proposition but as some Biharis may prefer such an option,⁶³ its scope should be persistently monitored.

The very unfortunate predicament of those foreign prisoners who are in detention even after serving their respective prison terms and typically known as 'released prisoners' detained in prison simply because the authorities of their home countries are not diligent enough to take responsibility for their repatriation, is pathetic. In fact, a report has demonstrated that detaining anyone in prison after serving the term of imprisonment (save in

⁶⁰ See for instance, United Nations High Commissioner for Refugees, *Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees* (2007) <<http://www.unhcr.org/46fa1af32.pdf>> accessed 28 February 2015.

⁶¹ Ibid.

⁶² See Ashrafuzzaman Khan and Mrinmoy Samadder, *Living Like Prisoner: Documenting the Experiences of Crime and Insecurity of Bihari Community in Bangladesh* (Research Evaluation Division, BRAC, 2007) <http://research.brac.net/reports/Bihari_Community.pdf> accessed 18 January 2015.

⁶³ Ibid.

case of any grave illness warranting medical treatment) is a violation of existing laws.⁶⁴ Referring to the decision of the HCD in *Faustina Pereira v State*, the report also cogently demonstrates that any non-cooperation of a foreign mission cannot rationalise the continued detention of a foreign national in prison.⁶⁵ While the GOB's constraint in resources is understandable, it may build partnerships with international donor communities for pulling together funding which may be required to provide assistance for these unfortunate persons.

⁶⁴ Arpeeta Shams Mizan, *Analyzing the Legislative Gaps in the Detention Scheme of the Foreigners in Bangladesh: The Released Prisoners* (National Human Rights Commission, 2014), at 13 <<http://www.nhrc.org.bd/PDF/Study%20reports/The%20Released%20Prisoner.pdf>> accessed 21 April 2015, at referring to Rule 102 of the *Jail Code*.

⁶⁵ *Ibid*, at 21 referring to *Faustina Pereira v State* (2001) 53 DLR (HCD) 414, at page 416.

SUPPORT TO WITNESSES AND VICTIMS OF CRIMES

Laws in modern societies generally perceive crimes as a threat to a peaceful and orderly society; and in prosecuting the offenders for the sake of maintenance of law and order in the society; often more direct victims of offences remain ignored by the administration of justice regime. Of course, such pursuit of justice gives some sort of mental relief to the victims or members of their families but plays no role in relieving the hardship inflicted by criminal activities. Hence, a report recommends that there be a specific legislation which would provide the mechanism for awarding economic relief to the victims of crimes the funding for which may be sourced from contributions by the Government, fines realised from convicted offenders, any amount of the forfeited bail bonds, penalties, and donations from individuals or organisations.⁶⁶

A draft law annexed to the report provides for a victim support committee in each district consisting of judges from the lower judiciary.⁶⁷ When it is more or less common knowledge in Bangladesh that the courts are already burdened by a huge backlog of cases; it is unlikely that encumbering judges with this type of administrative responsibility would make any positive contribution. While pulling together the money required for the application of this law may be challenging, the experience of the legal aid fund poses another challenge. A report has found that a substantial portion of the fund allocated for providing legal aid to those in need of financial assistance in accessing formal justice regime has largely remained unspent due to procedural complexities and lukewarm response from judges and lawyers.⁶⁸ It may imply that proper spending of the money may not be any lesser of a challenge and a well-thought mechanism would need to be put in place.

A report observes that the absence of any law on protection for victims or witnesses makes it easy to threaten them which may coerce some victims to maintain silence or witnesses to remain absent or become hostile witnesses⁶⁹ during the trial process. Or even worse, from fear of any repercussions, the victim of a crime may not even lodge a complaint

⁶⁶ Law Commission of Bangladesh, *A Final Report on a Proposed Law Relating to Compensation and Other Relief to the Crime Victim* (Law Commission's Report No. 75, 15 December 2007), <<http://www.lc.gov.bd/reports/75.pdf>> accessed 9 January 2015.

⁶⁷ Ibid, Section 6 of the Draft Bill.

⁶⁸ Dr. Mohammad Shahabuddin, *The International Covenant on Civil and Political Rights: A Study on Bangladesh Compliance* (National Human Rights Commission, 2013) <<http://nhrc.org.bd/PDF/Study%20reports/Study%20Report%20ICCPR.pdf>> accessed 29 April 2015, at 90.

⁶⁹ Law Commission of Bangladesh, *Gurutor Oporadhe Khotigrosto Bakti (Victim) O Sakhkhi Surokhkhar Prostabit Ainer Shortabolir Bishoyok Ain Commissioner Protibedon (A Report of the Law Commission on Recommendations on the Proposed Law Relating to Protection of Victim of Grave Offences and Witnesses)* (Law Commission's Report No. 108, 9 February 2011) <<http://www.lc.gov.bd/reports/108-Victim.pdf>> accessed 9 January 2015, at 2-3.

with the law enforcing agencies regarding the commission of an offence and existing laws do not help them (save in special cases such as violence against women). For these reasons; this report has recommended a special law on protection of witnesses and victims. The report proposes that some provisions of the *Evidence Act*, 1872 may be revised⁷⁰ but does not make any specific suggestion on which Section/s is/are in need of reform and precisely what type of changes are needed. Thus, the extent of the necessary legal reforms and the various competing interests (after all, relaxation of procedural formalities such as the proposed provision on using written testimony instead of oral evidence may involve the curtailment of the rights of accused) involved demand further research. Despite all these important issues about the proposed legal regime, the need for passing a law on these issues cannot be overemphasised.

⁷⁰ Ibid, at 6.

TORTURE

Reports on torture find a pervasive culture of torture in Bangladesh mainly stemming from a long-standing tradition of virtual immunity for those who resort to torture. A report notes that regarding the pervasiveness of torture, there is virtually no discernible difference between democratically elected governments and military dictators.⁷¹ If this claim factually holds through a more in-depth study, then it would be a damning indictment of the regime of successive political governments in Bangladesh for failing to ensure accountability of the members of law enforcing agencies who are commonly the most frequent perpetrators of torture. Although members of the law enforcing and security agencies are maligned (generally for good reasons) for perpetrating torture, it has been found that by flouting the dictates of law, Magistrates have often allowed the recoding of illegally obtained confessional statements and thus, encouraged, though in an indirect way, the resort to torture.⁷²

The propensity of using members of the law enforcing agencies for political purposes has meant that the GOB's power to bring them into books for their illegal activities amounting to torture has been severely restrained, a report notes.⁷³ Studies have advocated for the adoption of a specific law on prohibition of torture and pinned much hope on its critical role in bringing about a noticeable transformation in the existing culture of widespread torture. Now that the Parliament has passed the *Torture and Custodial Death (Prevention) Act, 2013*⁷⁴, there may be scope for undertaking further research on the compatibility of this law with the standards set in the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*.

A report has urged the GOB to allow victims of torture to set in motion the international legal mechanism for seeking redress which may done by opening the door for individual communication mechanism either by a declaration under Article 22 of the *Convention against Torture* or by acceding to the *Optional Protocol to the International Covenant on Civil and Political Rights, 1966*. Should the GOB follow this recommendation of a report and allows individual communications from victims of torture, the domestic

⁷¹ Faruque, Dr. Abdullah Al, *Analysis of Decisions of the Higher Judiciary on Arrest and Detention in Bangladesh* (National Human Rights Commission, 2013) <<http://www.nhrc.org.bd/PDF/Study%20reports/Arrest%20and%20Detention.pdf>> accessed 4 March 2015, at 19.

⁷² Ibid, at 34-35.

⁷³ Dr. Mohammad Shahabuddin, *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Study on Bangladesh Compliance* (National Human Rights Commission, 2013) <<http://www.nhrc.org.bd/PDF/Study%20reports/Study%20report%20CAT.pdf>> accessed 5 March 2015.

⁷⁴ Act No. 50 of 2013.

culture of impunity may no longer afford full shelter to perpetrators of torture.⁷⁵ As there is no limitation period for trial for torture; it may not be too late for the GOB to repeal the *Joint Drive Immunity Act, 2003*⁷⁶ and other similar legal instruments giving blanket immunity to members of the security and armed forces, as demanded by reports. While the focus of reports have revolved around the members of law enforcing and security agencies, torture perpetrated in other contexts and the impact of school experience and family culture on individual's perceptions about torture may not be gainsaid. Similarly, there seems to be dearth of research on potential practices amounting to torture as may be occurring in other institutions such as hospitals or institutions dealing with persons with physical or mental disabilities.

⁷⁵ Redress Trust, *Torture in Bangladesh 1971-2004: Making International Commitments a Reality and Providing Justice and Reparations to Victims* (2004) <<http://www.refworld.org/pdfid/4bf3a6e92.pdf>> accessed 22 February 2015.

⁷⁶ Act No. 1 of 2003.

ANNOTATED BIBLIOGRAPHY

ACCESS TO JUSTICE

Title of the Study: Access to Justice: Best Practices under the Democracy Partnership

Funded Amount: Not available

Source of Funds: USAID

Implementing Body: The Asia Foundation

Duration of the Project: Not available

Key-words: Mediation, alternative dispute resolution, and legal awareness

Summary of the Report:

The study attempts to provide an outlook of the accessibility to justice scenario in Bangladesh, by identifying the barriers and recommending measures needed to overcome them. The study first identifies the barriers that are hampering the access to justice in Bangladesh, which are: the prevalent discriminatory laws, shortcomings in the governance sector and the current judicial system, and the deficiency in the traditional or informal justice system such as *shalish* and the Union *Parishad*.

The study goes on to identify the common legal problems plaguing Bangladesh, which includes disputes regarding land and inheritance; discrimination against and abuse of women in the form of dowry, domestic violence, child marriage, etc. It recommends three broad approaches for the amelioration of the prevalent situation: a) legal awareness through media campaigns, training of partners and other relevant actors, organization of public meetings, seminars and workshops, and the formation of self-help groups; b) stimulation of mediation and alternative dispute resolution (ADR) mechanisms; and c) the development of efficient legal aid services programmes. The study also presents the profiles of NGO partners of The Asia Foundation working in the legal awareness, ADR and legal aid sectors of Bangladesh.

The study then provides a brief outline of the lessons learned as a result of previous interventions in the justice sector, they are: a) the development of skill and the knowledge of the law among the underprivileged populace, b) availability of alternative means of justice deliverance and enhancement of the acceptability of *shalish*, c) development of an efficient formal justice system and the rule of law situation, d) the empowerment of women and mobilisation of group advocacy, e) increment of responsiveness of government officials, f) improvement of material conditions and the affordability of justice for the poor, and e) advocacy and campaigns for legal reforms and better policies.

In conclusion, the study provides an outline of the future prospect of interventions in the justice

sector, in the form of: greater collaboration among the relevant stakeholders, monitoring of impact of interventions and their incorporation into future interventions and initiatives, monitoring the diminishing gap between citizens and the judicial system, improvement of training methodology for future actors in the sector, and lastly, maintenance of credibility and the sustenance development initiatives.

Bibliographic Details:

Asia Foundation, *Access to Justice: Best Practices under the Democracy Partnership* (2002)
<http://pdf.usaid.gov/pdf_docs/pnacp498.pdf> accessed 23 March 2015

Title of the Project: Community Legal Services (CLS)

Source of Funds: Department for International Development (DFID) of

Implementing Body: Maxwell Stamp PLC; British Council; Centre for Effective Dispute Resolution (CEDR) of UK

Duration of the Project: August 2012 - August 2017

Key-words: Access to justice, legal aid, and legal awareness

Summary of the Project:

The aim of the CLS Programme is to provide greater access to justice for the vulnerable communities in Bangladesh. The Project aims sustainable implementation of Community Legal Services in Bangladesh in partnership with grant partners, and better coordination between NGOs and communities.

The partners to the Programme for Round One are: Assistance for Slum Dwellers (ASD), Bangladesh Environment Lawyers Association (BELA), Bangladesh Legal Aid and services Trust (BLAST), Community Development Centre (CODEC), Madaripur Legal Aid Association (MLAA), Bangladesh National Women Lawyers` Association (BNWLA), Bright Bangladesh Forum (BBF), Green Hill, Light House, Coastal Association for Social Transformation Trust (COAST Trust), and Nagorik Uddyog. Each of the partners has taken up certain responsibilities through which their organisation will contribute to CLS. The responsibilities include providing training for legal and paralegal officials, organising legal awareness programmes and forums, conduct research on specific issues, etc.

Bibliographic Details:

Maxwell Stamp PLC; British Council; Centre for Effective Dispute Resolution (CEDR) of UK, *Community Legal Services Project* <<http://www.communitylegalservice.org/>> accessed 11 November 2014

Title of the Study: Initiative for Access to Justice for the Poor and Disadvantaged Community of Khulna District

Source of Funds: USAID's JFA Program

Implementing Body: Rupantar [in association with NLASO]

Duration of the Project: September 2013 - February 2015

Key-words: Legal aid services, access to justice

Summary of the Report:

The aim of the project is to enable equal access to justice for the poor and marginalised communities of Khulna District from the Union Parishad level up to the District level. The activities of the project include: establishment and assistance in the functioning of Union Legal Aid Committees, Upazilla Legal Aid Committees and District Legal Aid Committees in the Khulna district; coordination of meetings, capacity building and training of members of the respective legal aid committees; and the organisation of awareness campaigns for the poor and vulnerable populace, and the enlisted lawyers of the district.

As a result of the intervention, 2 Upazilla level and 8 Union Parishad level legal aid committees have been set up, and all the legal aid committees at every level in the district have been activated to provide legal aid services to the target communities.

Bibliographic Details:

Rupantar, *Initiative for Access to Justice for the Poor and Disadvantaged Community of Khulna District* (2015)

<http://www.rupantar.org/index.php?option=com_content&view=article&id=94:initiative-for-access-to-justice-for-the-poor-and-disadvantaged-community-of-khulna-district&catid=14&Itemid=272> accessed 4 March 2015

Title of the Project: Legal Sector Reform Project (Supporting the Bangladesh Government's Strategy for Legal and Judicial Reforms)

Source of Funds: Canadian International Development Agency

Implementing Body: Department of Justice, Canada; Canadian Bar Association; IBM Canada

Duration of the Project: 27 July 2001 - 28 September 2012

Key-words: Access to justice, capacity development, and vulnerable groups

Summary of the Project:

The objective of the project was to develop the legal sector of Bangladesh by making it more effective, transparent and accessible, essentially to the poor. In part A of the project, the Legislative Drafting Wing, policy making and implementing capacity of the Ministry of Law, Justice and Parliamentary Affairs were focused to be strengthened. In addition, improvement of the criminal justice system and strengthening of the Law Commission was focused on.

In part B of the project, improving the accessibility to justice for vulnerable groups including women and children was focused. Initially three particular sectors were targeted, namely legal aid, juvenile justice, and alternative dispute resolution; however, now the work focuses on legal aid only. Development of the District Legal Aid Committees and Duty Counsel Programme, in addition to building the institutional capacity of the National Legal Aid Services Organisation (NLASO) was the goal to this part of the project.

As a result of the project significant capacitive development of the National Legal Aid Services Organisation (NLASO) has been achieved. Collection of statistical information from the districts; regular reporting; making and implementing laws, and directives; setting up of sub-district level committees; and reformation of administrative aspects of legal aid process are the achievements of the NLASO. The District Legal Aid Committees (DLAC) have significantly improved their collaboration with NGOs and the number of legal aid recipients have also increased. The model legal aid office developed by the project has been implemented by the Government in all of the districts.

Bibliographic Details:

Department of Justice, Canada; Canadian Bar Association & IBM Canada, *Legal Sector Reform Project* <<http://www.acdi-cida.gc.ca/cidaweb/cpo.nsf/vWebCSAZEn/651ECCD588D1ED4785257C8B003E2816>>
accessed 11 November 2014

Title of the Study: Promoting Improved Access to Justice: Community Legal Service Delivery in Bangladesh

Source of Funds: Not available

Implementing Body: The Asia Foundation

Duration of the Project: Not available

Key-words: Community legal services, alternative dispute resolution

Summary of the Report:

The goal of the study was to assist international development agencies like DFID to better strategise their facilitation of access to justice for the poor, women and other vulnerable groups through local NGO partners. The report begins with a brief description of the programme environment, donor experience and the growing demand in the legal services sector. The study mapped the Community Legal Services (CLS) delivered by various NGOs across Bangladesh and provided its findings with regard to: a) the geographical coverage and population reach of CLS, b) the most widely used types of CLS, c) the role and limitations of NGOs, d) coordination among and evaluation of CLS providers, e) the types of cases encountered and their proportions, and f) the impact of CLS on the vulnerable and marginalised populace.

The study also provides a comparative assessment of the various ADR models prevalent in Bangladesh, namely: traditional *shalish*, community mediation organised by NGOs, mediation facilitated by NGO employees, and village courts. Furthermore, the study also provides its findings on the monitoring and evaluation of CLS activities with regard to the different monitoring approaches and bases for evaluation of CLS activities. Lastly, the study report recommends various measures that may be undertaken to better strategise and enhance the effectiveness of CLS activities in Bangladesh. The recommendations include the coordinated geographical expansion of CLS delivery system, strengthening of CLS and promoting its sustainability, increasing coordination among the formal and informal justice system and finally, the facilitation of collaboration and communication among various CLS providers and donors.

Bibliographic Details:

Asia Foundation, *Promoting Improved Access to Justice: Community Legal Service Delivery in Bangladesh* (2007)

Title of the Study: Report on Mapping Exercise and Institutional Survey for the Community Legal Services Project

Source of Funds: DFID

Implementing Body: Participatory Management Initiative for Development (PMID)

Duration of the Project: 12 February 2012 - 12 August 2012

Key-words: Legal services, NGOs

Summary of the Report:

The mapping exercise and institutional survey was conducted to better understand the current paradigm of work, governance and administration, nature of funding and functions performed by the selected NGO partners of the Community Legal Services (CLS) Project. The report is based on the review of documents, interview of relevant personnel and information collected through institutional visits. The report identified following 13 NGOs who were to be studied under the survey: ASK, BELA, BNWLA, BLAST, MLAA, Bachte Shekha, ESDO, RDRS, WAVE Foundation, SUS, Light House, Nagorik Uddyog, and BRAC. The report provides a brief description of the organisational mandate and management of and the services provided by the 13 selected NGOs.

The report provides a study of the nature and mechanism of sharing of knowledge and cooperation of the NGOs with Government Officials and Civil Society Organisations, and between the NGOs themselves. The report analyses the monitoring and follow-up mechanisms of the project, and also identifies the strengths and weaknesses of the selected NGO partners. In conclusion, the report provides a few recommendations with regard to the extension of the coverage area of the CLS Project, building greater cooperative partnerships, establishment of better knowledge sharing mechanisms and development of capacity building initiatives.

Bibliographic Details:

Participatory Management Initiative for Development, *Report on Mapping Exercise and Institutional Survey for the Community Legal Services Project* (2012) <<http://www.communitylegalservice.org/publication/mapping%20and%20institutional%20survey%20of%20the%20cls%20in%20bangladesh.pdf>> accessed 18 March 2015

CHILDREN ISSUES

Title of the Study: Awareness raising for Prevention and Elimination of Child Labour for a Child Labour Free Zone through Community Mobilization

Source of Funds: FNV Netherlands

Implementing Body: Bangladesh Labour Welfare Foundation

Duration of the Project: 2011 - Ongoing

Key-words: Child labour, and community mobilization

Summary of the Report:

The fundamental objective of the Project is to establish a Child Labour Free Zone in the Tongi area of Dhaka. In order to do so, the project aims to build the capacity of the local stakeholders including the local community and the local government members to prevent and eradicate child labour, and guide the target children into the formal schooling system. The Project has also organized awareness campaigns in the form of rallies, posters, leaflets, stickers and stakeholder meetings to motivate the community to act to achieve the ultimate goal. It has conducted a survey to identify the instances of child labour that occur in Tongi. The Project also aims to mitigate the harms and hazards of child labour on a short term basis, on the path to its complete eradication.

Bibliographic Details:

Bangladesh Labour Welfare Foundation, *Awareness raising for Prevention and Elimination of Child Labour for a Child Labour Free Zone through Community Mobilization* (2011 - Ongoing)

Title of the Study: Child Safety Net Project

Source of Funds: World Vision US, World Vision Canada and World Vision Hong Kong

Implementing Body: World Vision Bangladesh

Duration of the Project: May 2011 - September 2016

Key-words: Children, trafficking, abuse, and exploitation

Summary of the Report:

The goal of the project is to diminish children's vulnerability to trafficking, abuse and exploitation and increase rates of rescue, identification, rehabilitation, and reintegration for survivors. The target population of this project are families and children who are at risk of being trafficked, children present in trafficking situations, victims of trafficking, local non-governmental, community based organisations, and law enforcement authorities. The project includes a total beneficiary of 16,59,563 (Adult Male - 2,69,326, Adult Female - 5,05,898, Boys – 2,78,687, Girls – 6,05,652). It covers 25 Upazillas of 9 Districts under Khulna, Barisal and Dhaka Divisions. The programme consists of three offices in Jessore, Satkhira and Khulna.

The project aims to prevent trafficking, early marriage, abuse, exploitation, neglect and other forms of violence against children. It is also committed to establish a protection mechanism for vulnerable children by activating Counter Trafficking Committees at different levels; promoting cross-border collaboration, advocacy workshop, strengthening network, training of the members of the law enforcing agencies, and supporting the NGOs specialising in the rescue of victims. It commits to rehabilitate the children who have survived the violence perpetrated against them. Additionally, advocacy is also an integral part of this programme, contributing to its every component.

Bibliographic Details:

World Vision Bangladesh, *Child Safety Net Project* (2011-2016)
<<http://www.wvi.org/bangladesh/child-safety-net-project-0>> accessed 24 November 2014

Title of the Study: Children's Haven-Brothel Children's Human Rights Programme (CHP)

Source of Funds: Not available

Implementing Body: Jagorani Chakra Foundation

Duration of the Project: 2011 - present

Key-words: Social recognition, human rights, and children's haven-brothel

Summary of the Report:

The core objective of this programme is to make sure that children of women working in prostitution enjoy social recognition, have options of alternative life choices, and assert their human rights. The project is currently providing shelter support to 50 children born in brothels and ensures their education, food, treatment, skill training, and psycho-social support. Of these, 14 children are now attending shelter home school and 36 are studying in nearby schools and colleges. The project operation area covers 5 Wards in Jessore Pourosova. The main activities of this programme are as follows:

- Identify, select, and admit children born in brothels and children at risk.
- Provide residential facilities, child care, and provide support for child development.
- Arrange extracurricular activities and events.
- Provide support for social integration; arrange pre-school, primary & secondary education.
- Provide education support, arrange skill, and vocational training.
- Promote employment opportunities.
- Arrange awareness raising events; participate in networks, workshops, and seminars.

Bibliographic Details:

Jagorani Chakra Foundation, *Children's Haven-Brothel Children's Human Rights Programme (CHP)* (2011 – present) <<http://www.jcf-bd.org/index.php/programmesd/2014-03-12-09-24-56/children-s-haven-brothel-children-s-human-rights-programme-chp.html>> accessed 12 July 2015

Title of the Study: Community based Child Protection Project (CBCPP)

Funded Amount: Not Available

Source of Funds: UNICEF

Implementing Body: Jagorani Chakra Foundation

Duration of the Project: May 2014 - May 2016

Key-words: Community, child protection, child sex workers, and capacity building

Summary of the Report:

This community based child protection project operates in 2 upazillas of Bagerhat district with a beneficiary group of 37,866 people of which 15,608 are male and 22,258 are female. It also runs in 6 schools of the area. In these 6 schools, 923 students benefit from this programme. The programme intends to strengthen community based child protection in order to promote a protective environment for children, which is safe from violence, abuse and exploitation, including sexual abuse and commercial sexual exploitation.

Project has set up 2 child friendly spaces and 1 safe place where the children of sex workers and child sex workers get essential services. It also has established linkage with different GO-NGO to ensure the continuance of existing services for the child sex workers and sex workers' children. This programme has formed ward level child protection committees, mothers and adolescents group, and work for their capacity building.

Bibliographic Details:

Jagorani Chakra Foundation, *Community based Child Protection Project (CBCPP)*(2014-2016) <<http://www.jcf-bd.org/index.php/programmesd/2014-03-12-09-24-56/community-based-child-protection-project-cbcpp.html>> accessed 25 November 2014

Title of the Study: Improving Child Protection and Rehabilitation of Children from Sexual Abuse and Exploitation in Bangladesh

Source of Funds: European Union

Implementing Body: BNWLA, Save the Children, INCIDENT BD and Breaking the silence (BTS)

Duration of the Project: January 2012 - December 2014

Key-words: Children rights, child abuse, and sexual exploitation

Summary of the Report:

The main objective of the Project is to curb the instances of sexual abuse and exploitation of children in the districts of Dhaka, Rajshahi, Rangpur, Khulna, Barisal, and Chittagong in Bangladesh. The Project provides social services to child victims of sexual abuse and also works to reintegrate them into society and their respective communities. The Project reaches 40,000 children and 40,000 parents in 129 communities in 16 districts in Bangladesh. The Project partners with 200 local NGOs, 200 government officials from 5 ministries and other government institutions. Another significant aim of the project is to harmonize the national laws relating to the protection of the rights of children with the UNCAT and UNCRC.

The main activities of the Project are to raise awareness campaigns regarding child rights violation, enable stakeholder correspondence, build capacity of relevant stakeholders, establish of community based groups to enhance children's reintegration and lastly, conduct research on issues of sexual abuse and exploitation of children.

Bibliographic Details:

BNWLA, Save the Children, INCIDENT BD and Breaking the silence (BTS), *Improving Child Protection and Rehabilitation of Children from Sexual Abuse and Exploitation in Bangladesh* (2012 - 2014) <http://www.bnwlabd.org/?page_id=5231> and <http://eeas.europa.eu/delegations/bangladesh/projects/list_of_projects/223092_en.htm> accessed 8 July 2015

Title of the Study: Natun Jiboner Asha (Hope for New Life)

Source of Funds: World Vision

Implementing Body: World Vision Bangladesh

Duration of the Project: October 2013 - September 2016

Key-words: Child labour, vulnerable, primary school-aged, and working children

Summary of the Report:

The objective of the *Natun Jiboner Asha* (Hope for New Life) project is to reduce child labour amongst vulnerable children who are primary school-aged and contributes towards their increased well-being, safety, and protection. The programme addresses 331,013 people, of which 12,893 are working children dropping out of primary school. Besides, it aims to impact the lives of about 15,351 children aged 6-14 years old who are not attending school. The project location includes 5 Unions in Kishoreganj Upazilla under Nilphamari District and 8 wards in Rangpur City Corporation under Rangpur Division.

The programme seeks to encourage drop-out children to go back to school. In addition, in order to reduce the number of children engaged in hazardous work in its working locations the project implements 3 major components:

- a) Collaborating with the government and organisations to set up a referral system for drop-out primary school-aged children,
- b) Supporting the setting up of non-formal primary education learning centres for working children that are accessible and close to their places of work,
- c) Advocating to increase safety and protection of working children by establishing a community-based support system

In 2013 Fiscal Year it conducted a baseline survey and found that 23 per cent children in that area were involved in child labour, 63 per cent of which were engaged in hazardous work. The project also finds that 48 per cent of these children are out of school or have dropped-out of primary school.

Bibliographic Details:

World Vision Bangladesh, *Natun Jiboner Asha (Hope for New Life)* (2013-2016)
<<http://www.wvi.org/bangladesh/natun-jiboner-asha>> accessed 15 November 2014

Title of the Study: Protection of Working Children and Vulnerable Workers

Source of Funds: UK AID and the Australian Government

Implementing Body: MJF

Duration of the Project: 2006 - present

Key-words: Vulnerable, workers, children, protection, and rights

Summary of the Report:

The objective of this programme is to protect rights of the vulnerable children and workers from exploitation and abuse. In so doing, it aims to facilitate the ‘critical engagement’¹ of the workers, GOB, employers and other relevant stakeholders. It also seeks to establish a better livelihood for the target groups.

For *vulnerable workers* the project sets a target to cover 15,57,497 persons (garment sector workers, agriculture workers, domestic workers and migrant workers) in 16 districts of Bangladesh. The key interventions taken for the vulnerable workers are institution building, capacity building (duty-bearer & rights-holder), social movement, partnership/networking/alliance building, legal assistance and economic opportunity creation. The programme identifies some crucial issues to be advocated such as the implementation of minimum wages of ready-made garment (RMG) workers, shrimp processing workers, rice processing workers, and the implementation of the *Labour (Amendment) Act, 2013*,² National Labour Policy 1980, *Overseas Employment and Migration Act, 2013*³ and the *UN Convention on Migrant Workers, 1990*.

Total number of target population of the *working children* in this project is 20,000 children of 6-9 years old who are at risk for entering into labour market and 25,000 children of 8-14 years old who are engaged in hazardous child labour in 11 districts. It identifies issues such as the implementation of National Child Labour Elimination Policy 2010 as well as the protection of the children from digital pornography.

Bibliographic Details:

Manusher Jonno Foundation, *Protection of Working Children and Vulnerable Workers* (2006-present) <<http://www.manusherjonno.org/index.php?Key=28>> accessed 30 November 2014

¹*Critical engagement* refers to the dynamic efforts that continuously initiate an action, followed by reflection and further action for achieving an objective through collaborative means.

²Act No. 30 of 2013.

³Act No. VLVIII of 2013.

Title of the Study: Regional Project to Combat Trafficking in Children for Labour and Sexual Exploitation TICSА II

Source of Funds: ILO's International Programme on the Elimination of Child Labour (ILO-IPEC) and Department of Labour, United States of America

Implementing Body: Government of Bangladesh

Duration of the Project: 2003 - 2006

Key-words: Child trafficking and child labour

Summary of the Report:

The goal of the Project is to curb the trafficking of children for exploitative labour in South Asia and South-east Asia. The main activities of the Project are: (a) providing direct assistance to children, families and communities to prevent child trafficking, (b) ensuring protection, rehabilitation and reintegration of trafficked children, (c) framing and development of policies and capacity building of governments, organizations and relevant NGOs, and (d) creating a pool of knowledge through research and documentation of relevant information. In Bangladesh, the Project is supporting the development of a national plan of action as part of the Bangladesh Time-Bound Programme to Eliminate the Worst Forms of Child Labour. The Project specifically works in the districts of Thakurgaon, Dinajpur, and Panchagarh to prevent child trafficking. In the aforementioned three districts, the Project has established 13 child-friendly multipurpose community centers, 140 non-formal education units, provided economic assistance to some 300 families with trafficking vulnerable children, and set up 20 twenty member Community Vigilance Teams (CVTs) in the above three districts. The Project has assisted the rehabilitation and reintegration programmes in Dhaka, trains counselors, conducts skill-building workshops and piloted an individualized case management system in shelters for victims.

Bibliographic Details:

Government of Bangladesh, *Regional Project to Combat Trafficking in Children for Labour and Sexual Exploitation TICSА II* (2003 - 2006)
<<http://www.ilo.org/public/english//region/asro/bangkok/library/download/ticsa2.pdf>>
accessed 8 July 2015

COURTS AND ADMINISTRATION OF JUSTICE

Title of the Study: Access to Justice in Bangladesh - Situation Analysis

Source of Funds: Justice Sector Facility Project of the United Nations Development Programme

Implementing Body: Data Management Aid

Duration of the Project: Not available

Key-words: Access to justice, justice sector development

Summary of the Report:

The report is divided into three specific sections. Section A introduces the study, its purpose, the survey team, the methodology followed and its limitations. The primary objective of this study is to provide empirical data and analysis of the access to justice situation in Bangladesh which has been done through evidence based assessment of main agencies in the justice sector, household survey, a survey of major service providers, and through interviews and focus group discussions. Section B of the report provides an overview of the justice system in Bangladesh in three parts: a) the formal justice system, b) the informal justice system, and c) lawyers and legal aid. Section C of the report presents its results and findings in three parts.

Part 1 assesses the most common crimes that occur as gleaned from the household survey. Scuffles, theft, land disputes and domestic violence are the most prevalent crimes. The experience of vulnerable groups like women, children and the poor with regard to the crimes they are mostly victims to, the rate of crime, place of reporting of crimes, civil disputes – most common types and their effect on the poor, mechanisms of dispute resolution, and experiences of other vulnerable groups like Rohingya refugees and Biharis; are also assessed by the aforementioned part.

Part 2 assesses the access to justice situation within the formal justice system with regard to the key players, namely: the police, village courts, district courts, and prisons. Part 3 similarly assesses the access to justice situation within the informal justice system which includes traditional *shalish* and NGO-led *shalish*. Both, Part 2 and 3 assesses the respective justice sector players on the awareness among the households about their services, their proximity to the households, their main strengths and problems, and satisfaction with their services. Additionally, the aforementioned two parts also assesses the issues of torture by police, levels of trust in the village courts, and respect for rights by the district courts.

Lastly, Part 4 of the report assesses the role of lawyers and legal aid particularly with regard to: a) Government legal aid, b) NGO legal aid, and c) Lawyers in private practice. Part 4 assesses public awareness of the services provided, the proximity of the service delivery system to the household, the advantages and shortcomings of the services, and the levels of

trust and corruption within the specific sector. In conclusion, the report recommends measures and initiatives that may be undertaken to improve the overall access to justice situation and spread greater awareness among the general public. Recommendations include: greater accountability of the key players including police, lawyers and the judiciary; administrative and structural improvement of the courts to ensure more judges and better case management, and greater access to social services for the poor.

Bibliographic Details:

Data Management Aid, *Access to Justice in Bangladesh - Situation Analysis* (2015) <
<http://jsf-undp.org/wp-content/uploads/2015/03/04-Final-Access-to-Justice-Situation-Analysis-Full-Report-24March2015.pdf>> accessed 17 May 2015

Title of the Study: Activating the Justice System in Bangladesh

Funded Amount: Not available

Source of Funds: European Commission

Implementing Body: Not applicable

Duration of the Project: 27 August 2005 - 5 October 2005

Key-words: Justice Sector, access to justice, penal reform, village courts

Summary of the Report:

The aim of the study was to improve the justice sector with regard to its efficiency, accountability and its accessibility for vulnerable groups. The study assimilated data from documents available and interviews with various stakeholders in the justice sector. The broad finding of this study was that: justice was largely inaccessible to the poor and the vulnerable due to various institutional shortcomings and malpractices such as backlog of cases and corruption.

The study assessed the policy and programme framework of the justice sector in Bangladesh through individual structural analysis of each sub-sector, namely: the courts, the criminal justice system, village courts, police, prisons, the Bar and legal aid services, the probation services, juvenile justice system, and the informal justice sector. The study analysed the problems that plague this sector particularly with regard to land, rights of indigenous people, corruption, local governments, general law and order situation, and the independence and politicisation of the judiciary. It then went on to identify the key stakeholders in the justice sector and provided an assessment of the needs and the capacities of the relevant actors, namely: the judiciary, prisons, the probation department, NGOs, and the media.

In addition, the study also assessed the performance or the potential to bring about positive change of other planned or ongoing initiatives that aim for the development of the justice sector. The study also outlines the lessons learned and the risks involved, and identified specific sub-sectors requiring intervention and in line with that recommended measures that need to be undertaken to make justice affordable and accessible for the poor, like: the reactivation of village courts, expansion of affordable legal services, and penal reform. Lastly, the study defined the specific objectives and the results expected after intervention, and assessed the potential resource parameters for achieving the set objectives.

Bibliographic Details:

Baguenard, Jacques et. al., *Activating the Justice System in Bangladesh* (2005)

Title of the Study: Activating Village Courts in Bangladesh

Source of Funds: EU and UNDP

Implementing Body: LGD, MoLGRD, GOB and Madaripur Legal Aid Association

Duration of the Project: September 2010 – November 2015

Key-words: Capacity building, process and village court

Summary of the Report:

The objective of this project is to facilitate disadvantaged and marginalised people especially women to access justice. It covers 136 Unions from 22 Upazillas of 4 districts. Target beneficiaries of this project are disadvantaged and marginalised people especially women and children, women leaders, Community Based Organisations (CBO) members, village elites, community leaders, village police (choukider and dafader), religious leaders and imam, youth groups of the community, project staff and the masses. This programme consists of the following four outputs:

Output 1: Capacity building of the duty bearer and stakeholder: In order to achieve qualitative and effective outcome, this programme provides capacity building training for different bearers and stakeholders such as Union Parishad representatives, staff of the Union Parishad, women leaders, village police, religious leaders etc.

Output 2: Village court in action: This project has actually been designed to promote the activity of village court. If it is done, the disadvantaged sections of the village will be largely benefited which in turn decrease the backlog of court cases. Union Parishad representatives and staff are directly involved with the village court process who can share their opinions and views in the meetings arranged for them.

Output 3: Awareness raising programmes: With an aim to raise awareness about the village court procedure, this project organises workshop, rally, courtyard meeting, CBO meeting, and street drama for the CBO members, youth groups and community people.

Output 4: Involvement of Local administration: The project organizes Upazilla level sensitization workshops for wider dissemination of information on village court with Judges, Government officials, UNOs, MLAPA, LGRD etc. and at the same time holds bimonthly meeting with Local LGD & NGO staff.

Bibliographic Details:

Madaripur Legal Aid Association, *Activating Village Courts in Bangladesh (2010-2015)*
<<http://www.mlaabd.org/avcb.html>> accessed 8 June 2015

Title of the Study: Court User Survey Report 2013: Comilla and Pabna Districts in Bangladesh

Source of Funds: DFID, UNDP and Government of Bangladesh

Implementing Body: Not applicable

Duration of the Project: Not available

Key-words: Courts, justice delivery, and court-users

Summary of the Report:

The aim of the survey was to provide an overview of the perceptions and experiences of the court users in the District Courts of Comilla and Pabna so as to infer upon the present condition of the criminal justice system in the aforementioned districts. The report first assessed the socio-economic condition of the court-users in terms of gender participation, age structure, household size, education level, class structure, employment status, occupational background, marital status, and language proficiency. Secondly, the report assessed the institutional treatment of users in terms of the nature and types of crimes, registration of crimes in police stations, engagement of judges and lawyers, length of investigation and disposal of cases, grounds for receiving no services on the case date, and the current workload of the courts.

Thirdly, the report assessed the level of awareness and users' knowledge of the justice delivery system in terms of the security arrangement, inquiry mechanism, legal aid, infrastructure, facilities for women, police services and prison facilities. Fourthly, the report assessed the problems and shortcomings that plague the justice sector such as corruption, various types of procedural delays, lacking in terms of skills and logistics, and the external pressure on the different components of the criminal justice system. Fifthly, the report analysed the institutional limitations in the security arrangement, infrastructure, prosecution, police action, prison services and facilities for women, shortage of manpower, and the implementation criminal laws.

Sixthly, the report assessed the satisfaction of the court-users on the services rendered by the justice sector institutions in terms of the present criminal justice system, timely delivery of justice, prosecution, police investigation, lawyers and judges, accessibility to users and the media, and the legal aid facilities. Lastly, in conclusion the report recommended some short-term, mid-term and long-term logistic, administrative, infrastructural and procedural measures that need to be undertaken over the period of 3, 5 and 10 years respectively.

Bibliographic Details:

Uddin, Abul K.M.J., *Court User Survey Report 2013: Comilla and Pabna Districts in Bangladesh* (2014) <http://jsf-undp.org/wp-content/uploads/2014/04/Court_Users_Survey_Report.pdf>accessed 14 March 2015

GENDER ISSUES

Title of the Study: Combating Violence against Women in Bangladesh through Community Participation, Education and Media Access

Source of Funds: European Union

Implementing Body: Relief International-Uk Lbg

Duration of the Project: March 2011 - March 2013

Key-words: Violence against women, and women's rights

Summary of the Report:

The Project aims to curb violence against women through the creation of a culture of respect for women's rights, and community and government accountability in this regard. To achieve this end, the Project brings together the local leadership, media, and the civil society in Bangladesh to mould them into a force to combat violence against women. The Project has been implemented in the Satkhira and Jessore districts of Bangladesh.

The basic activities of the project includes: (a) creation and capacity building of local women's rights advocacy groups, (b) training of local officials and leaders on issues of gender rights, (c) training of religious leaders on women's rights so that they may sensitize the community, (d) capacity building and providing mini grants to local NGOs, CSOs, and women's and youth groups, (e) spreading awareness on violence against women among the educators and the youth, (f) training of local journalists on reporting on issues of violence against women, and (g) developing a web portal to disseminate information on violence against women and women's rights.

Bibliographic Details:

Relief International-Uk Lbg, *Combating Violence against Women in Bangladesh through Community Participation, Education and Media Access* (2011 - 2013)
<<http://www.ri.org/story.php?ID=92>> accessed 17 July 2015

Title of the Study: Growing Up Safe and Healthy (SAFE)

Source of Funds: Embassy of the Kingdom of the Netherlands

Implementing Body: Bangladesh Legal Aid and Services Trust (BLAST), Marie Stopes, Nari Maitree (We Can Campaign), ICDDR,B and Population Council

Duration of the Project: Not available

Key-words: Sexual health, reproductive, adolescents, rights, and violence against women

Summary of the Report:

The SAFE project addresses sexual health, reproductive rights, and violence against girls and women living in the slums of Dhaka. It seeks to provide legal services to vulnerable adolescents. The programme takes a right-based approach and raises awareness amongst girls and women about their rights. The project does this through a combination of messages on prevention, service provision, and on proposed legal and policy reforms. Prevention messages include bodily integrity and decision making in personal life.

It offers an extensive package of skills and services consisting of protective strategies against sexual and reproductive health risks, gender-based violence, and instruments for dealing with and lessening their impact. For this purpose, the partners of BLAST have integrated sessions and service points through the One-Stop Service Centers near slums. Additionally, the objective of the project is to enhance access to available remedies and related referrals through implementation of the *Domestic Violence (Prevention and Protection) Act*, 2010. It also emphasizes on knowledge about relevant rules and procedures. This action based project involves both quantitative and qualitative research.

Bibliographic Details:

Bangladesh Legal Aid and Services Trust (BLAST), Marie Stopes, NariMaitree (We Can Campaign), ICDDR,B and Population Council, *Growing Up Safe and Healthy (SAFE)* (2010-2014) <<http://www.blast.org.bd/content/safe-project/safe-brochure.pdf>> accessed 1 December 2014

Title of the Study: Growing Up Safe and Healthy (SAFE): Baseline Survey Report on Sexual and Reproductive Health and Rights and Violence against Women and Girls in Dhaka Slums – Spousal Violence against Women and Help Seeking Behaviour

Source of Funds: The Embassy of the Kingdom of the Netherlands (EKN)

Implementing Body: ICDDR,B, Bangladesh Legal Aid and Services Trust (BLAST), Marie Stopes Bangladesh, Nari Maitree, Population Council and We can Campaign

Duration of the Project: March 2012 - October 2013

Key-words: Sexual and reproductive health, violence against women and girls, and gender equality

Summary of the Report:

This short report is part of an action research project titled, “Growing up Safe and Healthy” (SAFE), which is conducting a baseline survey to address sexual and reproductive health and rights, and violence against women and girls in Dhaka slums. The identification of this Baseline Report is threefold: (1) The existence of different forms of spousal violence against women in the areas covered by this project; (2) The need for help on the part of the abused women; and (3) Attitude of the men and women with regard to gender equality and violence against women in the areas.

In this survey, slums covered are from Jatrabari, Mohakhali and Mohammadpur of Dhaka city. The data used in this report were collected from August 2011 to February 2012. This report at first, presents statistical data on the background characteristics of married women and men in the slums of the areas mentioned earlier. Then it surveys the prevalence of different kinds of spousal violence against women. Besides this short statistical survey, the report also notes attitudes regarding masculinities, gender and violence which finds that almost all the women (99%) and men (98%) strongly agree that both males and females should be treated equally. The survey’s findings conclude by highlighting that there is a need for proper implementation of the *Domestic Violence (Prevention and Protection) Act*, 2010.

Bibliographic Details:

Parvin, K., Sultana, N., & Naved, R.T. (2012), *Spousal violence against women and help seeking behaviour*. In R.T. Naved & S. Amin (Eds.), *Growing up safe and healthy (SAFE): Baseline report on sexual and reproductive health and rights and violence against women and girls in Dhaka slums* (Dhaka, ICDDR,B) <http://www.popcouncil.org/uploads/pdfs/2012PGY_SAFEBaseline_4.pdf> accessed 20 April 2015

Title of the Study: Making Women Legal Rights a Reality in Bangladesh

Source of Funds: Not available

Implementing Body: Bangladesh National Women Lawyers Association

Key-words: Community legal services, women's rights, violence, and protection

Duration of the Project: 2013 to 2016

Summary of the Report:

The target areas of this project are 64 unions in 16 Upazillas of 12 districts namely Rangpur, Dinajpur, Nilphamari, Kurigram, Gaibandha, Jamalpur, Mymensingh, Tangail, Moulvibazar, Khulna, Satkhira and Borguna. The goal of this project is to ensure better protection of women from all forms of violence through availing community legal services in these areas. The main objectives are to make sure that women have better access to justice through community based legal services. It also aims to increase adoption and enforcement of key women rights focused legislation. Another objective of this project is the improvement of mutual understanding and effectiveness between BNWLA and its partner institutions.

This project follows a comprehensive and holistic approach to ensure that the targeted women better protected from different forms of violence. This approach consists of four different pillars, which are direct service delivery, capacity building, advocacy and knowledge management. Overall, the goal of this project, as earlier stated, is to enhance the use of community legal services by women so that they are better protected from all sorts of violence.

Bibliographic Details:

Bangladesh National Women Lawyers Association, *Making Women Legal Rights a Reality in Bangladesh* (2013-2016) <<http://bnwlabd.org/mwlr/>> accessed 6 November 2014

Title of the Study: Joint Programme to Address Violence against Women in Bangladesh

Source of Funds: MDG Achievement Fund (The Government of Spain and the UN)

Implementing Body: ILO, UNAIDS, UNDP, UNFPA, UNICEF, UN Women, IOM, UNESCO, WHO

Duration of the Project: 09 April 2010 – 30 June 2013

Key-words: Gender, justice, and violence against women

Summary of the Report:

The objective of this joint programme is to address violence against women in Bangladesh. It aims to do this by reducing, preventing and responding to violence against women in order to have a positive effect on the lives of women and girls. This programme has set a three-fold strategy:

(a) Promoting the adoption and implementation of policies which will prevent VAW and protect women victims by boosting the capacities of the government, supporting the NGOs and civil society. It also targets to trigger the information system.

(b) Changing behaviour and attitudes of men, women, boys and girls that condone gender violence. The project wants to contribute towards the eradication of discriminatory practices such as trafficking, early marriage and dowry.

(c) Providing comprehensive and culturally appropriate support to the victims of gender-based violence with access to justice, immediate care, rehabilitation and the improvement of existing shelter system.

After the completion of the programme, this report notes some important achievements such as the enhancement of the capacity of government officials in 11 ministries, pilot for a database on VAW, strengthening of gender approach to healthcare and building better treatment facilities for VAW survivors, etc.

Bibliographic Details:

ILO, UNAIDS, UNDP, UNFPA, UNICEF, UN Women, IOM, UNESCO, and WHO, *Joint Programme to Address Violence against Women in Bangladesh* (2010-2013) <<http://www.mdgfund.org/program/jointunprogrammeaddressviolenceagainstwomenbangladesh>> accessed 26 April 2015

Title of the Study: Women in Justice

Source of Funds: USAID's Justice for All (JFA) Program

Implementing Body: Bangladesh Legal Aid and Services Trust (BLAST)

Duration of the Project: 19 January 2014 - 18 January 2016

Key-words: Women, legal profession, legal practice, and justice

Summary of the Report:

This project runs in 5 districts which include Dhaka, Chittagong, Rajshahi, Sylhet, and Rangpur. The goal of this programme is to promote and help the progress towards equal opportunity for women judges and other legal professionals. It expects that there will be 25 judges and 60 lawyer champions and the direct beneficiaries will be around 10,000 lawyers.

Its activities include professional development sessions and panel discussions with (a) judges, (b) lawyers and court reporters, (c) courtroom staff, and (d) law academics/researchers respectively, to raise context-specific issues regarding gender mainstreaming and legal practice, to generate concrete recommendations and identify key champions. Another activity of the project is to organize sessions at universities to share the experiences of the female students in order to encourage them to enter legal practice. It aims at producing short documentary titled 'Woman in Justice' showcasing women leaders in the justice sector, their career paths, challenges, and aspirations.

Bibliographic Details:

Bangladesh Legal Aid and Services Trust (BLAST), *Women in Justice* (2014-2016) <<http://www.blast.org.bd/whatwedo/wij>> accessed 25 November 2014

GOVERNANCE

Title of the Study: Justice Reform and Corruption Prevention (JRCP) Project

Source of Funds: German Development Cooperation (GIZ)

Implementing Body: Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs; Anti-Corruption Commission

Duration of the Project: July 2013 - June 2016

Key-words: Corruption prevention, and criminal justice

Summary of the Report:

The primary objectives of the Project are developing the criminal justice delivery mechanism and enabling the implementation of measures to prevent corruption. The Project spreads awareness among the general public regarding corruption and the ways in which it can be prevented. The project enables and incentivizes Corruption Prevention Committees (CPCs) and Community Policing Forums (CPFs) through interventions to perform their statutory obligations so as to safeguard the rights of the target communities.

As per the latest information available, a strategic plan to prevent corruption is being formulated with the Anti-Corruption Commission. Furthermore, over 400 events: including training programmes, workshops, meetings, and discussions etc. have been organized under the project at local and national level, thus reaching a population of over 22,000.

Bibliographic Details:

Law and Justice Division, Ministry of Law, Justice and Parliamentary Affairs, and Anti-Corruption Commission, *Justice Reform and Corruption Prevention (JRCP) Project* (2013 - 2016) <<http://www.lawjusticediv.gov.bd/static/projects.php>> accessed 4 July 2015

Title of the Study: Strengthening Civic Engagement in Elections and Political Processes For Enhanced Transparency and Democratic Accountability

Source of Funds: The Asia Foundation (Election Working Group – EWG)

Implementing Body: Lighthouse

Duration of the Project: May 2013 – March 2016

Key-words: Voters, transparency, accountability, and political and electoral violence

Summary of the Report:

The election program was designed to observe election-related events and collect citizens' views on the 2014 election on a monthly basis in 8 constituencies across Rajshahi and Rangpur divisions. This project offers to observe long-term domestic and regional election, and to advocate electoral reform. It also aims to mitigate electoral violence by citizen monitoring and educating the voters. In other words, the objectives of this comprehensive programme are threefold:

1. To enhance credibility and transparency in election processes;
2. Reduce both political and electoral violence; and
3. Strengthen the quality of representation and democratic accountability.

After observation the project has acquired the following achievements:

1. Some left-out voters were interested for registration and awareness about voter registration increased.
2. Quite a few political parties gave assurance to develop their internal party democracy.
3. After conducting observation on election related violence, the nature of election related violence has been shown to the general public and increased their awareness about violence.
4. Increased activeness of all types of media in election.
5. General citizens are aware about the promises made in 2008 election by the elected representatives.
6. General citizens and election stakeholders are able to know about the electoral act by the project's long term observation.
7. Recruitment of 520 Short Term Observers for Election Day Observation.
8. Recruitment of 543 Short Term Observers for 14 Upazila Election observations.
9. Conducting 11 Voter Role Campaign and conducting 6 Voter Registration Observations.

Bibliographic Details:

Lighthouse, *Strengthening Civic Engagement in Elections and Political Processes For Enhanced Transparency and Democratic Accountability* (2013 - 2016)
<<http://lighthousebd.org/ewg/>> accessed 4 June 2015

INDIGENOUS COMMUNITIES

Title of the Study: Building Capacities on Indigenous and Tribal Peoples' Issues in Bangladesh: Rights and Good Practices

Source of Funds: Embassy of Denmark, Dhaka

Implementing Body: International Labour Organization

Duration of the Project: 1 January 2012 – 30 June 2014

Key-words: ILO convention, indigenous and tribal peoples and ILO Programme

Summary of the Report:

The primary objective of this project is to promote the rights of indigenous people in Bangladesh through capacity building and advocacy initiative based on the principles of ILO Conventions (No. 107, No. 169, and No. 111) and other international instruments relevant to indigenous and tribal peoples. In order to do so, it provides assistance at the national level in ensuring integration of tribal and indigenous peoples' rights as per the national and international standards and policies. The Ministry of Chittagong Hill Tracts Affairs leads in coordinating and mobilising the relevant ministries and authorities to constructively engage with the indigenous rights discourse, through training, raising awareness, and dialogue. At the end of the project, it expects the following outcomes:

- Indigenous People's Organizations (IPOs), concerned government officials, and other relevant stakeholders are informed about the international instruments on indigenous people's rights and have gained exposure and experience with good practices;
- Awareness-raising campaign on ILO Convention No. 169;
- Enhanced coordination and consultation mechanisms on indigenous issues among government institutions and agencies;
- Media and indigenous and non-indigenous civil society at national level will become concerned about the rights of the target groups of this project
- Working with Indigenous and tribal peoples' own representative organisations as the key stakeholder in the project; and
- Training and capacity building will be tailor made for the specific target groups to enhance participation.

Bibliographic Details:

International Labour Organization, *Building Capacities on Indigenous and Tribal Peoples' Issues in Bangladesh: Rights and Good Practices* (2012-2014)
<http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_118375/lang--en/index.htm> accessed 16 June 2015

Title of the Study: Education Program for Ethnic Children of the Chittagong Hill Tracts (EPEC-CHT)

Source of Funds: Caritas Japan

Implementing Body: Caritas Bangladesh

Duration of the Project: 2005 - Present

Key-words: Ethnic communities, children and education for all

Summary of the Report:

The principle aim of this project is to develop ethnic children through education. In order to ensure Education For All (EFA), this program provides basic education for school-aged children of ethnic communities. It has to date completed three phases in December 2013 and currently running its fourth phase since January 2014. The program operates in 80 villages in 38 unions of 12 upazillas of three districts under the CHT. It covers 3,795 (Male – 1,249, Female – 2,546) direct beneficiaries and 7,567 (Male – 3,145, Female – 4,422) indirect beneficiaries from the areas. By January 2014, the achievement rate against the target is satisfactory, i.e. 80% and above. The project implementing body claims that it has brought about the following successes:

- Parents are now more aware of the importance of education and hygiene.
- They are happy that children have the opportunity to receive basic education and children are eager to go to school.
- Enrolment of 100% children at school going age is ensured.
- A total of 3,795 ethnic students got enrolled in January 2014 against the target of 3,200 and the achievement rate was 119%.

Bibliographic Details:

Caritas Bangladesh, *Education Program for Ethnic Children of the Chittagong Hill Tracts (EPEC-CHT)* (2005 – Present) <<http://www.caritasbd.org/2013-14/pro009.pdf>> accessed 18 June 2015

Title of the Study: Socio-economic Development of Chittagong Hill Tracts

Source of Funds: UK Aid and the Australian Government

Implementing Body: Manusher Jonno Foundation

Duration of the Project: 2005 - present

Key-words: Chittagong hill tracts, living standard, and indigenous people

Summary of the Report:

This programme aims at enabling the poor and vulnerable indigenous population to secure decent standard of living through sustainable income generation, ensure peace, and human dignity. For this reason, it promotes factors that would provide security to the lives of indigenous people. This project also intends to promote greater capacity to influence practices, policies, and attitudes in order to overcome poverty. Its objectives are to improve the quality of institutional service delivery, access to education and agricultural services, to preserve the indigenous traditions and culture which is almost on the verge of extinction.

It targets to cover 201,784 people from different ethnic community. This project is operating in 21 Upazillas of three hill districts. It identifies the following issues to be advocated:

- Review of the progress of CHT peace accord,
- Documentation of the customary land law of different ethnic community in CHT to assist the poor jumia people in establishing land rights, and
- Regulation and implementation of education policy based on indigenous context in CHT

The programme however plans to expand economic, livelihood and education programme as well as to expand the number of beneficiaries. In addition, it aims to increase the capacity of traditional leaders on customary land laws.

Bibliographic Details:

Manusher Jonno Foundation, *Socio-economic Development of Chittagong Hill Tracts* (2005-present) <<http://www.manusherjonno.org/index.php?Key=30>> accessed 30 November 2014

LABOUR ISSUES

Title of the Study: Bangladesh Skills for Employment and Productivity (B - SEP) Project

Source of Funds: Government of Canada

Implementing Body: International Labour Organization

Duration of the Project: 1 January 2014 - 31 December 2018

Key-words: Employment, labour policy, education and training

Summary of the Report:

Improving the enabling environment for industry skills development and the increased employability of young and adult women and men at national level is the core objective of this project. The targets of the B-SEP project are government agencies and their staff, employers, workers, training institutions, students, and trainees with a particular focus on groups disadvantaged in the labour market. The project will enhance the effectiveness and market-relevance of the Technical and Vocational Education and Training (TVET), and skills development system, which will thereby promote better quality, more access and an improved capacity to provide and sustain demand driven services.

The B-SEP project is focusing on five industry sectors namely agro-food processing, tourism, pharmaceuticals, ceramics, and furniture manufacturing. Additionally, the challenges in the Technical and Vocational Education and Training (TVET) Sector related to shortage of skilled workforce will be addressed through:

1. **Institutional Capacity Development** (Strengthening the skills development system, policy implementation and coordination)
2. **Standard Setting, Training, Assessment and Certification** (Setting and implementing qualification standards, instructor development and programmes on TVET)
3. **Industry Skills Development** (Building the linkages between demand and the supply of skills in five priority sectors involving the private sector)
4. **Promoting Equitable Access to Skills** (Increasing opportunities for skills training and employment for disadvantaged groups, particularly women and Persons with Disabilities (PWDs) through skills training/apprenticeships and job placement)

Bibliographic Details:

International Labour Organization, *Bangladesh Skills for Employment and Productivity (B - SEP) Project* (2014–2018) <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_243179.pdf> accessed 15 June 2015

Title of the Study: Improving Working Conditions in the Ready-Made Garment Sector (RMGP) Programme in Bangladesh

Source of Funds: Canada, the Kingdom of the Netherlands and the Department for International Development (DFID) of UK

Implementing Body: International Labour Organization (ILO)

Duration of the Project: From 22 October 2013 to 31 December 2016

Key-words: Decent work, working conditions, occupational safety and health

Summary of the Report:

Improving Working Conditions in the Ready-Made Garment Sector (RMGP) Programme in Bangladesh aims to support the interventions identified in the National Tripartite Plan of Action on Fire Safety & Building Integrity and recent commitments made by the GOB. This programme is based on the Joint Tripartite Statement by the GOB, employers and the workers. Improving Working Conditions in the RMGP has been designed according to the Sixth Five Year Plan (SFYP 2011-2016) of Bangladesh.

In order to improve working conditions in the RMG sector by providing short term and long term support, the ILO consulted largely with stakeholders of the sector. Depending on the results of extensive consultations, the project adopted an approach that has five vital components:

- Building and Fire Safety Assessment
- Strengthen Labour Inspection & Support Fire and Building Inspection
- Build Occupational Safety and Health (OSH) awareness, capacity and systems
- Rehabilitation and skill training for victims
- Implement Better Work programme in Bangladesh

The programme will achieve immediate results in terms of rapid action on building and fire safety and support to survivors in three and a half years. It will also achieve improved legislation, capacity and implementation of regulation on working conditions.

Bibliographic Details:

International Labour Organization (ILO), *Improving Working Conditions in the Ready-Made Garment Sector (RMGP) Programme in Bangladesh (2013-2016)*
<http://www.ilo.org/dhaka/Whatwedo/Projects/safer-garment-industry-in-bangladesh/WCMS_226530/lang--en/index.htm> accessed 14 June 2015

Title of the Study: Promoting Fundamental Rights and Labour Relations in Export Oriented Industries in Bangladesh

Source of Funds: The Royal Norwegian Government

Implementing Body: ILO

Duration of the Project: 3 June 2013 – 31 August 2015

Key-words: Labour market, labour policy, labour legislation, workers' rights, and employers.

Summary of the Report:

This project aims to promote better compliance with international labour standards, particularly the fundamental principles and rights at work in the ready-made garments, shrimp processing, shoe and leather sectors. It involves the following objectives:

Objective 1: Establishing better knowledge and understanding of labour rights (in law and in practice) among the workers and employers in the industries such as RMG, shrimp processing, shoe and leather.

Objective 2: Enhancing meaningful dialogue between the workers, employers and their representatives on workplace issues of mutual importance.

Objective 3: Improving the capacity of Government authorities and labour courts to perform core functions and mandates.

Objective 4: Support the implementation of OSH improvement measures and the National Tripartite Plan of Action on Building and Fire Safety, in particular its “practical activities.”

Bibliographic Details:

International Labour Organization (ILO), *Promoting Fundamental Rights and Labour Relations in Export Oriented Industries in Bangladesh* (2013-2015)
<http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_240033/lang--en/index.htm>
accessed 4 December 2014

MISCELLENIOUS

Title of the Project: Perceptions, Attitudes and Understanding - A Baseline Survey on Human Rights in Bangladesh.

Source of Funds: UNDP, DANIDA, SDC, and SIDA

Implementing Body: Data Management Aid and BLAST

Duration: Not available

Keywords: Baseline study, human rights, survey, and recommendations

Summary of the Activities/Reports:

In reaching outcome 3 of the ‘Bangladesh National Human Rights Commission Capacity Development Project’, the objectives of this study are to determine public attitudes and awareness of human rights, to assess the major types of human rights issues facing Bangladesh and to evaluate the knowledge and understanding of the NHRC. In doing so, it involves both quantitative and qualitative methods. From the survey, it finds that half of the respondents had not heard the term human rights – even if they had heard, they were not able to describe what it mean. This survey report also finds that a substantial number of people do not know that human rights are legally protected and enforceable in Bangladesh.

The survey focuses on civil and political rights, socio-economic rights, child rights and child labour, indigenous peoples, and climate and environment. For each area covered by the survey, some recommendations have been put in place. The report considers various mechanisms for conducting human rights education and awareness, including joint campaigns and ideas for low and no cost activities. But given that some issues are best addressed through other strategies rather than education and awareness, the report considers other options available to the NHRC such as advocacy, lobbying, and training.

Bibliography Details:

Data Management Aid and Bangladesh Legal Aid and Services Trust (BLAST), *Perceptions, Attitudes and Understandings: A Baseline Survey on Human Rights in Bangladesh* (2011) <<http://www.communitylegalservice.org/publication/a%20baseline%20servey%20on%20hr%20of%20bangladesh.pdf>> accessed 23 November 2014

POLICE

Title of the Project: Community-Oriented Policing

Source of Funds: Asia Foundation

Implementing Body: Asia Foundation and local partners

Duration of the Project: 2004 - Present

Key-words: Police, community-police relations

Summary of the Project:

The Report introduces the concept of Community Oriented Policing (COP) and then step-wise explains the adaption of a proven COP model which may be applied in Bangladesh. The first step was the finding of facts regarding the relationship between the police and the communities they served. This was done through interviews, focus group discussions, and roundtable meetings throughout the country convened by the Asia Foundation programme staff.

Secondly, the facts found were used for a baseline-survey on the community-police relations in three specific districts among the police, local elites, and ordinary citizens by the Asia Foundation staff and survey research specialists. The survey portrayed the existence of a strenuous relationship between the public and police.

Thirdly, the data collated through the survey was used to set up pilot Community Oriented Policing Programmes along with the NGO partners of the Asia Foundation. Through the COPs mapping of laws were done, relationship of trust was established between the community and police, promotional activities like rallies and public meetings were held, and Community Police Forums (CPFs) were set up. The CPFs became more and more prominent with the passing years and assumed the role of independent forums that conducted regular meetings and dealt with pressing legal issues. Many CPFs even set up subcommittees for alternative dispute resolution and to resolve conflicts between the public and the police.

The Asia Foundation convenes regular meeting of local partners and share information between them at a national level. In addition to that, it continues to share invaluable information and experience from COP projects in Indonesia and other countries. As a result of the pilot COPs crime rates decreased due to effective collaboration between the community and the police. The police, local officials, and communities have set aside their differences and are working together through the community-police forums.

Bibliographic Details:

Asia Foundation, *Community-Oriented Policing in Bangladesh*
<<http://asiafoundation.org/resources/pdfs/BGCOP8.5x11.pdf>> accessed 10 November 2014

PRISON ADMINISTRATION

Title of the Study: Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh

Source of Funds: Deutsche Gesellschaftur Technische Zusammenarbeit (GTZ) GmbH

Implementing Body: Bangladesh Ministry of Home Affairs and the Prison Directorate

Duration of the Project: 2008 - Present

Key-words: Prison, Paralegal, and Jail

Summary of the Report:

The project identifies two main problems with the present situation of prisons in Bangladesh: a) the deficiency of provision of legal advice and assistance to prisoners; and b) the detention of individuals awaiting trial for long periods of time due to delays. The aim of the project is to unite all relevant stakeholders of the prison administrative system and the judiciary so as to bring about fundamental and concrete changes to resolve the problem of overcrowded prisons in Bangladesh. Low-cost interventions and proven good practices were identified for implementation. The implementation of the project was undertaken in two parts: through the work of paralegals and the training of officials working in prisons.

The project trained 18 paralegals as a pilot programme in three prisons: Dhaka Central Jail, Bogra District Prison, and Madaripur District Prison. The paralegals were trained to collect various information regarding prisoners and survey the prison population which was then shared with other stakeholders such as prosecutors and courts. Paralegals were provided support by BRAC, BLAST, and MLAA. The Paralegals held educational courtyard clinics for prisoners, traced families of the prisoners, and provided legal support to detainees in police stations. In the second part of the implementation of the project prison staffs were trained regarding the assessment of risks concerning prisoners under sentence.

Bibliographic Details:

Bangladesh Ministry of Home Affairs and the Prison Directorate, *Improvement of the Real Situation of Overcrowding in Prisons in Bangladesh* (2008) <http://www.blast.org.bd/content/publications/Brochure%20on%20IRSOP_PRISONS%20handout.pdf> accessed 18 March 2015

Title of the Project: Justice and Prison Reform for Promoting Human Rights and Preventing Corruption

Source of Funds: UK Department for International Development (DFID); Spanish Agency for International Development Cooperation (AECID)

Implementing Body: Ministry of Home Affairs (MoHA); Prison Directorate; Ministry of Law, Justice and Parliamentary Affairs (MoLJPA); Anti-Corruption Commission (ACC)

Duration of the Project: 2012 - 2018

Key-words: Prison reform, human rights, and criminal justice system

Summary of the Project:

The objective of the project is to implement and ensure the protection of Human Rights through the reform of the prison system, and judicial and executive bodies so as to prevent corruption. The project consists of two components: (a) the promotion of political human rights through the reform of prisons, and (b) judicial reform and measures to prevent corruption.

For the first component, the goal is to employ paralegals to reduce the backlog of cases in courts and the overcrowding of prisons in Bangladesh. ‘Paralegal Aid Clinics’ are used to make prisoners aware of their rights and the steps involved in a legal proceeding. Paralegals also participate in ‘Case Coordination Committee’ meetings to work together with various sectors of the criminal justice system and rehabilitation of prisoners; to better identify the causes of and work to improve the backlog of cases. ‘Diversion’ measures are employed to divert menial crimes to alternative forms of resolution and rehabilitation. The Prison Directorate is supported to create a curriculum for training personnel on the regulations of the UN Conventions.

For the Second component, revision of old laws is advised to the Ministry of Law, Justice and Parliamentary Affairs. A ‘Judicial Audit’ is conducted to critically understand the criminal justice system of Bangladesh, which would serve as the guideline for future decisions and reforms. The ACC is supported to develop strategic capacity and enhance its ability to fight corruption.

The project has resulted in better coordination between all the sectors of the criminal justice system and the efficient exchange of information among them. The release of prisoners on time, aiding their rehabilitation and reintegration into society, organization of training programmes and therapies with partner institutions are the results of the prison reformation component of the project. The partnership with the Anti-Corruption Commission (ACC) has enhanced the Commission’s ability to combat corruption through strategic planning, and the appointment and financing of ‘prevention officers’ in each of the pilot districts. Networks are also being set up with the help of Corruption Prevention Committees at district level to incentivise better coordination between the public and the State. Institutional and procedural inefficiencies, shortcomings have been identified with regard to

the criminal justice system through the 'Judicial Audit' thus aiding the Government to amend them.

Bibliographic Details:

German Society for International Cooperation, *Justice and Prison Reform for Promoting Human Rights and Preventing Corruption* <<https://www.giz.de/en/worldwide/15042.html>> accessed 10 November 2014

RELIGIOUS MINORITIES

Title of the Study: Developing Alternative Life skills and Initiatives Together – DALIT

Source of Funds: HEKS (Hilfswerk der Evangelischen Kirchen Schweiz), Switzerland

Implementing Body: Gram Bikash Kendra

Duration of the Project: July 2008 - December 2012

Key-words: Community, rights, livelihoods, and Dalit people

Summary of the Report:

The small communities in Bangladesh, including - Bashfore, Lalbagi, Shabdokor, Badia, Baddokor, Hari, Bashmoli, Hela, Rough, Robidash, Partni, Mali, Balmiki, Nunia, Reeshi, Dhopa, Kamar, Kumar, Fisherman, Majhi (boatman), Kullu, Barber who are oppressed, tortured, and suppressed by heredity, detached from mainstream society are treated as *Dali community*. The aim of this project is to assist this community to access their rights and improve their livelihoods. In doing so, GBK addresses the aforementioned community's education, technical skill for alternative and dignified occupation, and other issues of the livelihoods. In other words, the core objective this programme is that *Dalit* community people would be included socially, live with dignity, and treated with respect by the greater community.

The project had been implemented in North-West Bangladesh since 2006, covering 05 sub-districts of 3 districts namely - Dinajpur, Rangpur and Nilphamari. It covered 518 households and 2703 (male – 1377 & female – 1326) participants. The programme consisted of the following major areas of interventions/components:

- Awareness development of Dalit community people
- Child education
- Leadership and skill development training
- Livelihoods
- Right based activities
- Linkage, coordination, and advocacy

Bibliographic Details:

Gram Bikash Kendra, *Developing Alternative Life Skills and Initiatives Together – DALIT* (2008 – 2012) <<http://www.gbk-bd.org/projects/dalit>> accessed 7 July 2015

Title of the Study: Ensuring Rights of the Marginalized Population

Source of Funds: Australian Government and UKAID

Implementing Body: Manusher Jonno Foundation

Duration of the Project: 2008 - present

Key-words: Religious and outcaste minorities, Adivasi, sex-workers, disability, *Char* dwellers, landless people, slum dwellers, and fisher-folk community

Summary of the Report:

The objective of this programme is to ensure the cultural, economic, political, and social rights of the religious and ethnic minority. With this in mind, this project aims that government and non-government services and resources related to education, health, natural and financial resources are made available to the marginalised people. The target population of this project is 5,40,500 individuals from 44 districts of 7 divisions. It identifies a number of advocacy issues which includes education rights of children of sex workers, legal procedure against brothel eviction, amendment of fisheries laws and land laws, adoption of an anti-discriminatory law, and implementation of disability law.

It expects of the following outcome:

- Poor and marginalised groups are organised and are demanding their rights on health, education, employment, natural and financial resources.
- Poor and marginalized people engage in social and political decision making processes.
- Relevant government and non-government agencies are becoming more responsive to the needs of the religious and ethnic minority.

The project however identifies some key challenges as well. The existing policy with regard to *khas* land and shrimp culture is not favourable for the landless people. Another key challenge is convincing the government for land reform.

Bibliographic Details:

Manusher Jonno Foundation, *Ensuring Rights of the Marginalized Population* (2008 - present) <<http://www.manusherjonno.org/index.php?Key=26>> accessed 30 November 2014

SOCIALLY MARGINALISED SECTIONS OF THE POPULATION

Title of the Study: Accelerating Livelihoods Options for the Dalit and Ethnic Community (ALO)

Source of Funds: HEKS (Hilfswerk der Evangelischen Kirchen Schweiz), Switzerland

Implementing Body: Gram Bikash Kendra

Duration of the Project: January 2013 - December 2016

Key-words: Community, rights, advocacy, and Dalit and Ethnic people

Summary of the Report:

The general objective of this project is to establish rights of the Dalit and Ethnic people and create an environment for them to work with people from greater communities. Specifically, this programme aims to establish a stronger non-mainstreamed community that is better able to advocate and negotiate for its services and rights. It also intends to deliver stronger networking, advocacy structures and strategies in order to increase access to land and reduce discrimination against non-mainstreamed communities. The project purports to improve the livelihood status of the target community.

However, the project is implemented through community approach covering a total of 1080 households and a population of 4700, (male-1298, female-1338, children and adolescents-2064), the project participants are socially excluded, marginalized, and are people of all age groups. It is covering North-west Bangladesh in 3 Districts, while covering 5 Upazila (5 municipalities) like - Parbotipur, Dinajpur Sadar, Fulbari Upazila (Dinajpur district), Rangpur Sadar Upazila (Rangpur District) and Sayedpur Upazila (Nilphamari district). This project consists of the following major activities:

- PPS(Child Development Center - CDC) activities
- HOME (Holistic Opportunities for Meritorious Students' Education) Activities
- Sports and Cultural Activities
- Student's Exposure visit to Government Primary school and parents' day of HOME students
- Support to Graduate Students (those who are passed class-iii from project school)
- Day observation
- Kind support for income generating activities - IGA
- Technical support for value chain activities
- Create savings habit of community members
- Providing support to victims
- Land rights support
- Making available new technology to the target people
- Homestead vegetable gardening

- Project participant's awareness training
- Group and CBO activities respectively at community, upazilla and district level
- Networking, Linkage & Advocacy through HEKS partners network (Network of Non-mainstream Marginalized Communities) NNMC
- Action research on human rights status of Dalit & Ethnic group of Bangladesh
- Legal Aid, advice, & support for high profile human rights abuse case.

Bibliographic Details:

Gram Bikash Kendra, *Accelerating Livelihoods Options for the Dalit and Ethnic Community (ALO)* (2013 -2016) <<http://www.gbk-bd.org/projects/alo>> accessed 28 June 2015

Title of the Study: Ensuring Rights of Fair Justice for the Vulnerable and Adibashi Groups

Source of Funds: USAID's Justice for All Programme

Implementing Body: Lighthouse

Duration of the Project: Not available

Key-words: Access to justice, and legal awareness

Summary of the Report:

The objective of the Project is to enable greater access to justice for citizens in the form of access to legal services and enforcement of rights through the formal justice system. The Project has been implemented in 29 Unions of 4 Upazilas of the Rajshahi district. The Project activities cover the linkages between the DLAC, UZLAC and UPLAC. The Project conducts a legal education campaign through awareness campaigns, courtyard meetings and orientation sessions. The Project has also developed an interactive website, conducts street drama, and also organizes workshops for judges, lawyers, and judicial officers. Posters, stickers, leaflets and booklets have been printed, a video documentary has been made, and study reports have been published by the Project to share legal information. The Project also conducts community sensitization programmes through rallies, human chains, mass petitions, road shows, mass awareness campaigns through drama, song, theatre shows, drum beating, awareness meetings, video documentary shows, among other methods.

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Title of the Study: Strengthening Non-State Actors to claim rights and services for extreme marginalized and socially excluded communities of Bangladesh (NSA)

Source of Funds: European Union & OXFAM-GB

Implementing Body: Shariatpur Development Society

Duration of the Project: September 2010 – August 2013

Key-words: Rights, services, and excluded and marginalised population

Summary of the Report:

The primary target participants of this project are socially excluded and marginalised communities. The objective of this programme is to strengthen civil society and community based organisations to enable the most vulnerable, marginalised and excluded people to have sustainable access to essential services and economic opportunities. The project promotes advocacy, awareness raising and capacity building activities for the civil society and community based organisations in areas of concern for the rights of the poor and marginalised people, such as land rights, decent work and labour rights, etc. The working areas of this project are Domsar, Tulasar, Binodpur, Mahamudpur, Chandrapur, Chitolia, Purba Damudya, Siddya, Islampur, Koneekshwar, Darul-Aman, Dhanokati, Ramvodropur, Choygaon, Mohisar, DMkhali, Naryonpur Chorvaga, Senerchor, Palerchor, Mulna, Joynagar, Borokandi, Gopalpur unions from Shariatpur Sadar, Damudya, Bhedorganj and Janjira sub-districts of Shariatpur district. The target group are the excluded and marginalised communities of rural urban setting, small & marginalised farmers, women headed households, people with disability, and small community based organisations.

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